

N. 3022
No. 15400

United States
Court of Appeals
for the Ninth Circuit

ROBERT EMMETT HOYT,

Appellant,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

FEB 27 1957

PAUL P. O'BRIEN, CLERK

No. 15400

United States
Court of Appeals
for the Ninth Circuit

ROBERT EMMETT HOYT,

Appellant,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer, Amended	9
Attorneys, Names and Adresses of	1
Clerk's Certificate	135
Complaint	3
Ex. A—Schedule of Hours, etc.	6
Findings of Fact and Conclusions of Law ...	19
Judgment	23
Notice of Appeal	24
Pre-Trial Order	11
Statement of Points on Appeal	137
Transcript of Proceedings	25
Witnesses, Defendant's:	
Bogardus, Wesley L.	
—direct	87
—cross	91
—redirect	92
Brown, Charles F.	
—direct	128
—cross	129

	INDEX	PAGE
Witnesses, Defendant's (Continued):		
<i>DeVoe, Rachael A.</i>		
—direct	93	
—cross	104	
<i>House, J. G.</i>		
—direct	84	
—cross	86	
<i>McIntyre, Sterling</i>		
—direct	107	
—cross	115	
—redirect	119	
—recross	120	
Witness, Plaintiff's:		
<i>Hoyt, Robert E.</i>		
—direct	27, 130	
—cross	37, 76, 133	
—redirect	81	

NAMES AND ADDRESSES OF ATTORNEYS

ANDERSON, FRANKLIN & O'BRIEN;
BEN ANDERSON,

333 American Bank Building,
Portland 5, Oregon,

For Appellant.

MAUTZ, SOUTHER, SPAULDING, DENECKE
& KINSEY;

WAYNE WILLIAMSON,

1001 Board of Trade Building,
Portland 4, Oregon,

For Appellee.

In the District Court of the United States
for the District of Oregon

Civil No. 8496

ROBERT EMMETT HOYT,

Plaintiff,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Defendant.

COMPLAINT

Plaintiff for his cause of action against defendant
alleges:

I.

Plaintiff brings this action under and by virtue of
an act of Congress of the United States for the
regulation of commerce among the states, namely,
the Fair Labor Standards Act of 1938 (29 U.S.C.A.,
paragraphs 201 to 219, inclusive), as hereinafter
more fully appears.

II.

That at all times mentioned herein General Insurance
Company of America was and now is a corporation,
incorporated and existing by virtue of the
laws of the State of Washington, with its principal
Oregon office and place of business located in the
City of Portland and District of Oregon; that at all
times mentioned herein defendant was and now is
engaged in the general insurance business and is
authorized to do business in the States of Oregon,

Washington and other states, and was and is engaged in interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

III.

That from the 1st day of March, 1954, to the 15th day of May, 1955, plaintiff was employed in interstate commerce by defendant; that in the course of said employment plaintiff was engaged as a boiler and machinery inspector; that plaintiff's period of employment was from March 1, 1954, to May 15, 1955, at the hourly rate of pay of \$2.27; that under the said Fair Labor Standards Act of 1938 the maximum hours for straight time for that period was 40 hours per week (for purposes of computation only).

IV.

That during the time mentioned herein plaintiff worked for the defendant certain hours in excess of hours fixed by the Fair Labor Standards Act, and that he was never paid for hours in excess of 40 hours per week, either at the overtime rate of time and one half or otherwise, to which he was and is entitled under said Act.

V.

That at all times mentioned herein plaintiff worked for defendant various hours in excess of 40 hours per week for the period from March 1, 1954, to May 15, 1955, was paid straight time only for 40 hours per week. No overtime was paid to him for the hours in excess of 40 hours per week as shown in the attached schedule of time, marked "Exhibit

A"; that although plaintiff has made repeated demands upon defendant for payment of said \$2,295.88 as shown in the attached schedule marked "Exhibit A," defendant has refused and still refuses to pay the same, and that the same is due and owing from defendant to plaintiff; that said schedule is attached hereto and by this reference is made a part hereof.

VI.

That plaintiff is entitled to recover from defendant a further sum of \$2,295.88 as liquidated damages.

VII.

That it has been necessary for plaintiff to employ counsel to prosecute this claim for wages and liquidated damages and plaintiff is therefore additionally entitled to receive from defendant a reasonable amount as attorney fee herein; that a reasonable amount to be allowed as plaintiff's attorney fee herein is the sum of \$750.00.

Wherefore, plaintiff demands judgment against defendant in the sum of \$2,295.88 as the amount of unpaid overtime compensation, and an additional sum of \$2,295.88 as liquidated damages, and for the further sum of \$750.00 as a reasonable attorney fee herein and for his costs and disbursements incurred herein.

ANDERSON & FRANKLIN,

By /s/ BEN ANDERSON,

Attorneys for Plaintiff.

EXHIBIT A

Period	Max. Hrs.	Hrs. Worked Per Week	Overtime Hrs. Per Wk.	Reg. Rate Per Hour	Overtime 1½ Times Reg. Rate	Total Overtime for Said Period
3/1-7/54	40	50 $\frac{3}{4}$	10 $\frac{3}{4}$	\$2.27	\$3.40 $\frac{1}{2}$	\$ 36.60
3/15-21/54	40	47 $\frac{1}{2}$	7 $\frac{1}{2}$,,	,,	25.54
3/22-28/54	40	45 $\frac{3}{4}$	5 $\frac{3}{4}$,,	,,	19.58
3/29/54 to 4/4/54	40	45 $\frac{3}{4}$	5 $\frac{3}{4}$,,	,,	19.58
4/5-11/54	40	46 $\frac{1}{4}$	6 $\frac{1}{4}$,,	,,	21.28
4/12-18/54	40	48 $\frac{1}{4}$	8 $\frac{1}{4}$,,	,,	28.09
4/19-25/54	40	55 $\frac{3}{4}$	15 $\frac{3}{4}$,,	,,	53.63
4/26-54 to 5/2/54	40	65 $\frac{1}{4}$	25 $\frac{1}{4}$,,	,,	85.98
5/10-16/54	40	53 $\frac{3}{4}$	13 $\frac{3}{4}$,,	,,	46.82
5/24-30/54	40	54 $\frac{3}{4}$	14 $\frac{3}{4}$,,	,,	50.22
5/31/54 to 6/6/54	40	46	6	,,	,,	20.43
6/7-13/54	40	54 $\frac{1}{2}$	14 $\frac{1}{2}$,,	,,	49.37
6/14-20/54	40	58	18	,,	,,	61.29
6/21-27/54	40	62	22	,,	,,	74.91
6/28/54 to 7/4/54	40	58	18	,,	,,	61.29
7/5/54-11/54	40	54	14	,,	,,	47.67
7/19-25/54	40	63	23 $\frac{1}{2}$,,	,,	80.02
7/26/54 to 8/1/54	40	41	1	,,	,,	3.40 $\frac{1}{2}$
8/2/54	40	62	22	,,	,,	74.91
8/9-15/54	40	57	17	,,	,,	57.89

8/16-22/54	40	51	11	37.46
8/23-29/54	40	45	5	"
8/30/54 to 9/5/54	40	62	22	"
9/6-12/54	40	42	2	"
9/13-19/54	40	48	8	"
10/4-10/54	40	71	31	"
10/11-17/54	40	50	10	"
10/18-24/54	40	54	14=	"
10/25-31/54	40	43	3	"
11/1-7/54	40	48	8	"
11/8-14/54	40	48	8	"
11/15-21/54	40	48	8	"
11/22-28/54	40	49	9	"
11/29/54 to 12/5/54	40	47	7	"
12/6-12/54	40	55	15	"
12/13-19/54	40	57	17	"
12/20-26/54	40	41	1	"
12/27/54 to 1/2/55	40	52	12	"
1/3-9/55	40	48	8	"
1/10-16/55	40	50	10	"

(Continued on Next Page)

EXHIBIT A—(Continued):

Period	Max. Hrs.	Hrs. Worked Per Week	Overtime Hrs. Per Wk.	Reg. Rate Per Hour	Overtime 1½ Times Reg. Rate	Total Overtime for Said Period
1/17-23/55	40	48	8	"	"	27.24
1/24-30/55	40	59	19	"	"	64.70
1/31/55 to 2/6/55	40	45	5	"	"	17.03
2/7-13/55	40	50	10	"	"	34.05
2/14-20/55	40	64	24	"	"	81.72
2/21-27/55	40	49	9	"	"	30.65
2/28/55 to 3/6/55	40	53	13	"	"	44.27
3/7-13/55	40	41	1	"	"	3.40 1/2
3/21-27/55	40	44	4	"	"	13.62
3/28/55 to 4/3/55	40	47	7	"	"	23.84
4/4-10/55	40	62	22	"	"	74.91
4/11-17/55	40	63	23	"	"	78.32
4/18-24/55	40	51 1/2	11 1/2	"	"	39.16
4/25/55 to 5/1/55	40	60	20	"	"	68.10
5/2-8/55	40	48 1/2	8 1/2	"	"	28.94
5/9-15/55	40	50 1/2	10 1/2	"	"	35.75
						\$2,295.88

United States District Court,
District of Oregon

No. Civil 8496

ROBERT EMMETT HOYT,

Plaintiff,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Defendant.

October 2, 1956.

Before: Honorable Claude McColloch,
Chief Judge.

Appearances:

BEN ANDERSON,
Of Attorneys for Plaintiff.

WAYNE A. WILLIAMSON,
Of Attorneys for Defendant.

TRANSCRIPT OF PROCEEDINGS

Mr. Williamson: If the Court please, I would like to introduce Mr. Bruce Maines, if I may. He is a lawyer from Seattle and admitted to practice there in the Federal Courts. I would like to have him assist us in this case.

The Court: Motion allowed.

Mr. Anderson: If the Court please, this is a wage and hour case.

The Court: I have read the file.

Mr. Anderson: Yes. I believe that the pretrial order is before your Honor. I have had marked Pretrial Exhibits 1 to 9, which comprise the time records and directives which have been issued by the employer to the plaintiff. I will offer them in evidence.

The Court: They are admitted.

(The documents referred to, having been identified in the pretrial order, were received in evidence as Plaintiff's Exhibits 1 to 9, inclusive.)

Mr. Williamson: Do you wish to hear an opening statement?

The Court: Suit yourself. I have read the file.

Mr. Williamson: I might make just a very brief outline of it, your Honor, if you think it would be of assistance.

The Court: You are the best judge of that at this stage.

Mr. Williamson: I would like to make just a few brief comments. Would you care to say anything, Mr. Anderson?

The Court: He can answer you.

(Brief opening statements were made by counsel for the respective parties, and thereafter the following occurred.) [2*]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

ROBERT E. HOYT

the Plaintiff herein, was produced as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Anderson:

Q. State your name to the Court, please.

A. Robert E. Hoyt.

Q. Where do you live, Mr. Hoyt?

A. Portland.

Q. What is your occupation?

A. Boiler inspector.

Q. How long have you been engaged in the inspection of boilers?

A. Approximately ten years.

Q. Where are you employed?

A. State of Oregon.

Q. How long have you been so employed?

A. About six months.

Q. Were you for a period of time employed by the General Insurance Company of America?

A. Yes.

Q. When did you first take employment with this company? A. In 1950.

Q. Were you assigned to a territory at that time? A. Yes. [3]

Q. What generally is the setup of the company in the State of Oregon with relation to the maintenance of an office or supervisory personnel in this state?

(Testimony of Robert E. Hoyt.)

A. Well, each inspector is assigned a territory with a chief inspector in charge.

Q. Where is the residence of the chief inspector?

A. The chief inspector was in Seattle. They had an Oregon supervisor in the Portland office.

Q. Were you employed under the direction of the supervisor in Portland? A. Yes.

Q. What were the duties of that supervisor?

A. To assist us in our work and to help us on any problems that might arise.

Q. What were your particular duties in this employment?

A. To inspect the boilers and machinery.

Q. Did that require considerable time?

A. Yes.

Q. Were you assigned a number of units to inspect, a number of companies to inspect?

A. Yes.

Q. How many did you have assigned to you?

A. Well, it varied. I had all the way from twelve hundred to eighteen or nineteen hundred at one time.

Q. Located where? [4]

A. All over Oregon and Southwest Washington.

Q. That called for travel on your part?

A. Yes.

Q. What was your means of travel?

A. Automobile.

Q. Who furnished the automobile?

A. The insurance company.

Q. Did they provide you with gasoline and oil?

(Testimony of Robert E. Hoyt.)

A. Yes.

Q. And car expense? A. Yes.

Q. What was your wage contract with the company?

A. I had no wage contract. My salary when I started was \$325 a month, and at the finish I was getting \$400.

Q. I see. What were your wages as of March 1st, 1954? A. \$400 a month.

Q. Did that continue until you terminated your employment with this company? A. Yes.

Q. When did you terminate your employment?

A. May 20th, 1950.

Q. Now as an inspector did you have regular hours or irregular hours?

A. Irregular hours.

Q. Who arranged your inspection schedule? [5]

A. Well, our regular schedule was—we more or less arranged that ourselves, with the exception of emergencies and accidents we were on call. They had our home telephone number in the various plants. They would call us nights and Sundays or any time.

Q. What was the nature of the objects that you inspected? A. Boilers and electrical motors.

Q. Did you inspect them from the standpoint of safety or efficiency or what?

A. Well, from the standpoint of safety.

Q. You would make daily reports, would you?

A. Yes.

Q. To whom would those reports be made?

(Testimony of Robert E. Hoyt.)

A. To the insurance company.

Q. Was it part of your duties to determine the suitability of the objects that you inspected for the purpose for which they were used?

A. Not for the purpose for which they were used, no.

Q. The matter of safety was your concern?

A. Yes.

Q. In making your reports did you make those reports to the branch office here in Portland or to Seattle?

A. Both. There were certain reports that went to the branch office and certain ones to the home office.

Q. Were your reports made upon forms furnished by the [6] company? A. Yes.

Q. Approximately how much of your time was spent in actual inspections and how much of your time on the average, if you know, would be spent in travel time?

A. Oh, I imagine about 75 or 80 per cent inspections.

Q. Do you imagine that or is that your best judgment? A. That is my judgment.

Q. You did on occasions, I assume, find defective or unsafe conditions in your inspections?

A. Yes, that is right.

Q. And what was your procedure on such occasions?

A. If it was very serious, we were supposed to immediately telephone the home office.

(Testimony of Robert E. Hoyt.)

Q. What were your instructions from your company with relation to making condemnations on the spot or suspending operations of any unsafe objects? A. We had strict rulings not to do that.

Q. You had strict orders from where?

A. From Seattle, the home office.

Q. Of your company? A. Yes.

Q. In what manner did you receive those orders from your company in regard to restraining you from making any on-the-spot suspensions? [7]

A. In a letter, written instructions.

Q. What is your background of experience which qualifies you as a boiler inspector?

A. As a marine engineer for about twenty years.

Q. You don't have a professional degree in engineering? A. No, I don't.

Q. What other, if any, training do you have as an inspector?

A. Well, I served an apprenticeship as a machinist and worked in various stationary plants.

Q. You have not attended any technical day school or night school? A. No.

Q. For your training? A. No.

Q. How many inspectors does this company employ in this area? A. In this area?

Q. Yes. I am talking now about the Seattle district office. A. Why, I suppose about ten.

Q. Do you know most of them? A. Yes.

Q. And the training which they received for qualification as an inspector, was that in substance the same as yours? A. Yes.

(Testimony of Robert E. Hoyt.)

Q. Were you given any training course at the time that you [8] took employment with this company for this service?

A. For about two weeks, I think, I went around with another inspector. It wasn't exactly a training course, no. I already had a license for the job.

Q. You have a State license as a boiler inspector? A. A national license.

Q. Now will you state what the mechanics are of inspecting a boiler? What do you do?

A. Well, the boiler has to be dry, empty, and opened up thoroughly.

Q. Yes.

A. And you check the safety appliances; that is, the safety valves, the water glasses, the piping, and then if it has been inspected before you need not check the construction of it at all, providing there has not been any serious repairs to it. Then your main concern is for corrosion or deterioration.

Q. Does this inspection require you to crawl inside of the furnace? A. Yes.

Q. Does it require you to crawl inside of the boiler shelves on occasions? A. Yes.

Q. What kind of clothes are you wearing during your work? A. Coveralls, boiler suits. [9]

Q. What kind of tools do you employ?

A. Oh, a hammer and a flashlight.

Q. Do you make hydrostatic tests?

A. Yes.

Q. What sort of tools do you use for that operation? A. A gauge.

VI.

Is the plaintiff entitled to the sum of Two Thousand Two Hundred Ninety-five and 88/100 Dollars (\$2,295.88) as liquidated damages or any lesser amount?

VII.

Is the plaintiff entitled to attorney's fees in the sum of Seven Hundred Fifty and no/100 (\$750.00) Dollars or in any lesser amount?

Exhibits

Certain exhibits have been identified and received as pretrial exhibits, the parties agreeing with the approval of the Court that no further identification of the exhibits is necessary, but that said exhibits are subject to objection on all other grounds.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.
- 26.
- 27.
- 28.
- 29.
- 30.

The parties hereto agree to the foregoing pretrial order and the Court being fully advised in the premises:

Now Orders that the foregoing pretrial order shall not be amended except by consent of both parties or to prevent manifest injustice; and

It Is Further Ordered that the pretrial order supersedes all pleadings; and

It Is Further Ordered that upon the trial of this case no proof shall be required as to matters of fact hereinabove specifically found to be admitted but that proof upon the issues of facts and law between plaintiff and defendant as hereinabove stated shall be had.

Dated at Portland, Oregon, this day of
....., 1956.

/s/ CLAUDE McCOLLOCH,
Judge.

Approved:

/s/ BEN ANDERSON,
Of Attorneys for Plaintiff;

/s/ WAYNE A. WILLIAMSON,
Of Attorneys for Defendant.

Lodged October 1, 1956.

[Endorsed]: Filed October 2, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial on the 2nd day of October, 1956. The plaintiff appeared in person and by Ben Anderson, of his attorneys, and the defendant appeared by Wayne A. Williamson and Bruce Maines, of its attorneys. The pretrial order approved by the parties through their respective attorneys of record having been signed and entered, the case was heard without a jury by the Honorable Claude McColloch, Judge of the above-entitled court. Evidence of the plaintiff and the defendant was heard and received and both parties rested. Oral arguments were made and briefs were submitted on behalf of the respective

parties. Thereafter the court rendered its decision and in accordance therewith the court hereby makes and enters the following:

Findings of Fact

I.

That at all times mentioned herein General Insurance Company of America was and now is a corporation, incorporated and existing by virtue of the laws of the State of Washington, with its principal Oregon office and place of business located in the City of Portland and District of Oregon; that at all times mentioned herein defendant was and now is engaged in the general insurance business and is authorized to do business in the States of Oregon, Washington and other states, and was and is engaged in interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

II.

That from the 1st day of March, 1954, to the 15th day of May, 1955, plaintiff was employed by the defendant; that in the course of said employment plaintiff was engaged as a boiler and machinery inspector, making inspections in the State of Oregon and in the State of Washington.

III.

That at the time plaintiff was employed by defendant, plaintiff's primary duty consisted of the performance of office or nonmanual field work directly related to management policies or general business

operation of the defendant or defendant's customers.

IV.

That plaintiff customarily and regularly exercised discretion and independent judgment in the performance of his duties.

V.

Plaintiff performed under only general supervision work along specialized and technical lines requiring special training, experience and knowledge and executed special assignments and tasks under only general supervision.

VI.

Plaintiff did not devote more than 20 per cent of his hours worked in the workweek to activities which were not directly and closely related to the performance of the work just described above.

VII.

Plaintiff's work required the consistent exercise of discretion and judgment in its performance.

VIII.

Plaintiff's work was predominantly intellectual and varied in character and of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

IX.

Plaintiff did not devote more than 20 per cent of his hours worked to activities which are not an

essential part of and necessarily incident to the work immediately described above.

X.

Plaintiff was compensated on a salary or fee basis at a rate in excess of \$75.00 per week.

Based upon the foregoing findings of fact, the Court hereby makes and enters the following:

Conclusions of Law

I.

That at the time plaintiff was employed by defendant, plaintiff was an administrative employee within the meaning of the Fair Labor Standards Act of 1938, 29 U.S.C.A., Secs. 201-219.

II.

That plaintiff, at the time he was employed by defendant, was a professional employee within the meaning of the Fair Labor Standards Act of 1938, 29 U.S.C.A., Secs. 201-219.

III.

That the plaintiff, at the time of his employment with defendant, was in an exempt employment and not subject to the provisions of the Fair Labor Standards Act of 1938, 29 U.S.C.A., Secs. 201-219.

Dated this 7th day of November, 1956.

/s/ CLAUDE McCOLLOCH,
Judge.

Service of copy acknowledged.

[Endorsed]: Filed November 7, 1956.

In the District Court of the United States
for the District of Oregon

Civil No. 8496

ROBERT EMMETT HOYT,

Plaintiff,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Defendant.

JUDGMENT

The above-entitled action came on regularly for trial on the 2nd day of October, 1956, before the Honorable Claude McColloch, Judge of the above-entitled Court. The plaintiff appeared in person and by Ben Anderson, of his attorneys, and the defendant appeared by Wayne A. Williamson and Bruce Maines, of its attorneys.

Testimony was introduced by both parties and both parties rested. Thereafter oral arguments were made by respective counsel and briefs were submitted to the Court. The Court thereafter rendered its decision and after due consideration made findings of fact and conclusions of law.

Based Upon said findings of fact and conclusions of law made and entered in the above-entitled action,

It Is Ordered and Adjudged pursuant to said findings of fact and conclusions of law that plaintiff have and recover nothing of or from the defendant.

Dated this 7th day of November, 1956.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed November 7, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Robert Emmett Hoyt, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that final judgment in favor of the defendant and against the plaintiff entered in this action on the 7th day of November, 1956.

Dated this 29th day of November, 1956.

ANDERSON, FRANKLIN &
O'BRIEN;

By /s/ BEN ANDERSON,
Of Attorneys for Appellant.

[Endorsed]: Filed November 30, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER

Comes now the defendant and for an amended answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits that it is a corporation incorporated under the laws of the State of Washington with its principal Oregon office and place of business in the City of Portland, and admits that it is engaged in a general insurance business and authorized to do business in the State of Oregon, and admits that plaintiff was employed by the defendant from the 1st day of March, 1954, to the 15th day of May, 1955, and in connection with his work did boiler and machinery inspecting, but the defendant denies each and every other allegation therein contained and the whole thereof.

Defendant for a First Further Defense Alleges:

I.

That at the time plaintiff was employed by defendant, as set forth in plaintiff's complaint, plaintiff was an administrative employee within the meaning of the Fair Labor Standards Act of 1938 in that plaintiff performed office and nonmanual field work that related to management policies or general business operations of defendant or its customers; regularly and directly assisted proprietors, executives and administrative employees, or, worked

only under general supervision along the specialized and technical lines of engineering and the like that had required special training, experience and knowledge, or, executed special assignments and tasks only under general supervision; customarily and regularly exercised discretion and independent judgment; did not engage in "nonexempt work" during more than 20 per cent of his weekly hours worked; and received a salary in excess of \$75.00 or more a week.

For a Second Further Defense Defendant Alleges:

I.

That plaintiff at the time he was employed by defendant, as set forth in plaintiff's complaint, was a professional employee within the meaning of the Fair Labor Standards Act of 1938 in that plaintiff performed work predominantly intellectual and varied, to wit, engineering and the like which cannot be standardized in point of time; consistently exercised discretion and judgment; did not work in excess of 20 per cent of his time in non-exempt work and received a salary of \$75.00 or more per week.

For a Third Further Defense Defendant Alleges:

I.

That plaintiff was not requested nor required to work in excess of forty hours per week but on the contrary was instructed not to work in excess of forty hours per week and, therefore, plaintiff vio-

lated his instructions if in fact he worked more than forty hours per week.

II.

That plaintiff on numerous times and occasions, contrary to the instructions of the defendant and during the time he was employed by the defendant as set forth in plaintiff's complaint, returned to his home in Portland, Oregon, instead of staying all night in the locale where his work was to be conducted thereby increasing the number of hours of work claimed by plaintiff over and above an adequate and proper number of hours as directed by defendant.

Wherefore, defendant prays judgment herein.

MAUTZ, SOUTHER, SPAULDING, DENECKE & KINSEY,

By /s/ WAYNE A. WILLIAMSON,
Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed May 28, 1956.

[Title of District Court and Cause.]

PRETRIAL ORDER

The above-entitled case came on regularly for pre-trial conference before the undersigned judge of the above-entitled court on the day of October, 1956. Plaintiff appeared by Ben Anderson, of his attorneys, and the defendant appeared by Wayne A.

Williamson, of its attorneys, and the parties, with the approval of the Court, agreed upon the following:

Nature of Proceedings

Plaintiff brings this action under the Fair Labor Standards Act of 1938 (29 U.S.C.A. Paragraphs 201 to 219, inc.) to recover for alleged overtime while employed by defendant.

Admitted Facts

I.

That at all times mentioned herein General Insurance Company of America was and now is a corporation, incorporated and existing by virtue of the laws of the State of Washington, with its principal Oregon office and place of business located in the city of Portland and District of Oregon; that at all times mentioned herein defendant was and now is engaged in the general insurance business and is authorized to do business in the States of Oregon, Washington and other states, and was and is engaged in interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

II.

That from the 1st day of March, 1954, to the 15th day of May, 1955, plaintiff was employed by the defendant; that in the course of said employment, plaintiff was engaged as a boiler and machinery inspector, making inspections in the State of Oregon and in the State of Washington.

Contentions of the Parties

I.

Plaintiff's Contentions

A.

That plaintiff's period of employment was from March 1, 1954, to May 15th, 1955, at the hourly rate of pay of \$2.27; that under the said Fair Labor Standards Act of 1938 the maximum hours for straight time for that period was 40 hours per week, for purposes of computation only.

B.

That during the time mentioned herein plaintiff worked for the defendant certain hours in excess of hours fixed by the Fair Labor Standards Act, and that he was never paid for hours in excess of 40 hours per week, either at the overtime rate of time and one-half or otherwise, to which he was and is entitled under said Act.

C.

That at all times mentioned herein plaintiff worked for defendant various hours in excess of 40 hours per week for the period from March 1, 1954, to May 15, 1955, was paid straight time only for 40 hours per week. No overtime was paid to him for the hours in excess of 40 hours per week as shown in the attached schedule of time, marked "Exhibit A"; that although plaintiff has made repeated demands upon defendant for payment of said \$2,295.88 as shown in the attached schedule marked "Exhibit A," defendant has refused and still re-

fuses to pay the same, and that the same is due and owing from defendant to plaintiff; that said schedule is attached hereto and by this reference is made a part hereof.

D.

That plaintiff is entitled to recover from defendant a further sum of \$2,295.88 as liquidated damages.

E.

That it has been necessary for plaintiff to employ counsel to prosecute this claim for wages and liquidated damages and plaintiff is therefore additionally entitled to receive from defendant a reasonable amount as attorney fee herein; that a reasonable amount to be allowed as plaintiff's attorney fee herein is the sum of \$750.00.

Defendant denies the foregoing contentions of the plaintiff.

Defendant's Contentions

A.

That at the time plaintiff was employed by defendant, as set forth in plaintiff's complaint, plaintiff was an administrative employee within the meaning of the Fair Labor Standards Act of 1938 in that plaintiff performed office or nonmanual field work relating to management policies or general business operations of employer or employer's customers; regularly and directly assisted proprietors, executives and administrative employees or worked only under general supervision along specialized

and technical lines that had required special training, experience and knowledge, or executed only under general supervision special assignments and tasks; customarily and regularly exercised discretion and independent judgment; did not engage in "non-exempt work" during more than 20 per cent of his weekly hours worked and received a salary in excess of \$75.00 or more per week.

B.

That plaintiff at the time he was employed by defendant, as set forth in plaintiff's complaint, was a professional employee within the meaning of the Fair Labor Standards Act of 1938 in that plaintiff performed work predominantly intellectual and varied which cannot be standardized in point of time; consistently exercised discretion and judgment; did not work in excess of 20 per cent of his time in nonexempt work and received a salary of \$75.00 or more per week.

C.

That plaintiff was not requested nor required to work in excess of forty hours per week but on the contrary was instructed not to work in excess of forty hours per week and, therefore, plaintiff violated his instructions if, in fact, he worked more than forty hours per week.

D.

That plaintiff on numerous times and occasions, contrary to the instructions of the defendant, during the time he was employed by the defendant, as set forth in plaintiff's complaint, returned to his home

in Portland, Oregon, instead of staying all night in the locale where his work was to be conducted thereby increasing the number of hours of work claimed by plaintiff over and above an adequate and proper number of hours as directed by defendants.

Plaintiff denies the foregoing contentions of the defendant.

Issues to Be Determined

I.

At the times mentioned, was the plaintiff employed by defendant in a covered employment within the meaning of the Fair Labor Standards Act of 1938?

II.

At the times mentioned, was the plaintiff employed by the defendant as an administrative employee within the meaning of the Fair Labor Standards Act of 1938?

III.

At the times mentioned, was the plaintiff employed by the defendant as a professional employee within the meaning of the Fair Labor Standards Act of 1938?

IV.

At the times mentioned, was the plaintiff instructed by defendant not to work in excess of 40 hours per week?

V.

At the times mentioned, did the plaintiff work in excess of 40 hours per week?

(Testimony of Robert E. Hoyt.)

Q. Pressure gauges?

A. Pressure gauges and a tape measure.

Q. You use hydrostatic pumps? A. Yes.

Q. You carry those tools with you, do you?

A. Yes.

Q. Are they your own tools? A. No, no.

Q. The tools belong to your employer?

A. Yes.

Q. Did you have anything to do during your course of employment with the shaping of company policies? A. No.

Q. Did you keep time? A. Yes.

Q. Did you receive any instructions from your company how to keep your time?

A. At various times, yes.

Q. Initially, when you started your work, what instructions [10] did you have with respect to keeping your time?

A. Well, when I first started employment with the company they used those sheets you have there.

Mr. Anderson: If the Court please, may I have the Bailiff hand up this exhibit to the witness?

Q. You are being handed Plaintiff's Exhibit No. 1. Will you tell the Court what that exhibit is?

A. These are time sheets. It concerns our daily work. That is, the amount of time we spent in each company. Some days we would go in eight, nine or ten different assureds' plants. We would list the time here that we spent in those various plants.

Q. Does that include your travel time?

A. Yes, sometimes it included travel time.

(Testimony of Robert E. Hoyt.)

Q. Those are carbon copies of the originals?

A. Yes.

Q. You mailed the originals to your employer each day?

A. Well, not each day, but usually once a week.

Q. Now was there a time when you were instructed to change your method? A. Yes.

Q. One other question: The exhibit that you have in your hands, No. 1, does that include your travel time? A. Yes.

Q. What further instructions did you receive from your [11] company with relation to keeping your time?

A. Well, they had a change of chief engineers, and we were instructed to discontinue these sheets. For a while we had no way of keeping our time. We kept nothing. Then later on they came out with a different sheet. Each one of these is for a day, and the sheets they gave us were for two weeks.

Mr. Anderson: Might I have the Bailiff, your Honor, hand to the witness Exhibit No. 2?

Q. You have had handed to you Plaintiff's Exhibit No. 2. Will you tell the Court what that is?

A. This is technically the same thing, except these went for a period of two weeks and we were instructed not to put anything on these except the time we spent in the plant inspecting the object.

Q. Now during all this time did you keep a separate time record of the time that you worked for this company other than Exhibits No. 1 and No. 2?

A. Yes, I did.

(Testimony of Robert E. Hoyt.)

Q. The Bailiff is now handing you Plaintiff's Exhibit No. 3. I will ask you what they are.

A. These are expense books. We kept our various expenses in there, operating the cars, hotels, and so forth.

Q. Did you also keep your time in those books?

A. Yes, I kept my time in there with the notes on them. [12]

Q. When would you make those entries?

A. Oh, sometimes daily; sometimes at the end of the week.

Q. Is that a correct record of the time that you worked for this company during the period involved? A. Yes, it is.

Q. Did you prepare the Exhibit A attached to your complaint from the time sheets that you now have in your hands? A. Yes.

Q. Is Exhibit A attached to the complaint a correct transcript from the time sheets which have been marked Exhibit No. 3 which you have in your hands? A. Yes, it is.

Q. Were you ever paid any time for working over 40 hours a week? A. No, never.

Q. Did you at any time broach that subject to your employer? A. No, I didn't.

Q. Prior to working for this company, the General Insurance Company of America, you were employed by another insurance company, were you, as a boiler inspector? A. Yes, that is right.

Q. Did you receive overtime pay on that?

A. Yes.

(Testimony of Robert E. Hoyt.)

Q. What discussion have you had with your employer during your employment with respect to overtime pay, if any? [13]

A. Well, no discussion. At one time we kept overtime cards or time cards, and certain people got overtime, and I discontinued them on orders from the home office that I didn't come under the overtime rate and not to keep them any more.

Q. Did your employer tell you why you should not keep your overtime records?

A. No. They just stated that I didn't come in that category.

Q. I will hand you what has been marked as Plaintiff's Exhibit No. 9, and ask you whether that is a directive you received from your company?

A. Yes, it is.

Q. When did you receive that directive?

A. January 3rd, 1950.

Q. Did you receive other directives from your company in the course of this employment with regard to the detailed manner in which you should carry out your employment?

A. Yes, quite often.

Q. I will hand you Plaintiff's Exhibits 5 to 7, inclusive, and Plaintiff's Exhibit No. 9, and ask you whether those are directives relating to the detail of your work which you have received from your company during the course of your employment?

A. Yes, they are. [14]

Mr. Anderson: Your witness.

(Testimony of Robert E. Hoyt.)

Cross-Examination

By Mr. Williamson:

Q. Now, Mr. Hoyt, before you went to work for the first insurance company that you worked for as a boiler inspector—that was what company?

A. Lumbermen's Mutual.

Q. You had to obtain a State license?

A. Yes.

Q. What are the requirements before you can obtain a State license?

A. Well, as I remember, one qualification is three years' time in the operation of high-pressure steam boilers.

Q. Do you recall that if you have a degree that is reduced to two years? A. I believe so.

Q. Is that an engineering degree?

A. I believe it is.

Q. Then do you have to be twenty-five years old before you can take the examination?

A. I am not sure. I was under the impression it was twenty-one. I am not certain. I could look it up for you.

Q. Now, if you have this experience and the age qualification then do you take a written examination? [15] A. Yes.

Q. Where is that given? Where did you take it?

A. I took it at Portland.

Q. How long did it take to take the examination?

A. Two days.

(Testimony of Robert E. Hoyt.)

A. I didn't subscribe to that course. I studied the course, yes.

Q. You studied that for a period of about four years, did you not?

A. Something like that.

Q. Now, when you received this license that you obtained were you also then licensed as a State inspector or a Deputy Commissioner, as I believe they are called?

A. No, you are not. If you have the national license, they will give you a State license. [18]

Q. Now before going to work for the General Insurance Company were you required to have both a national license and the State of Oregon license?

A. Yes.

Q. And in connection with your work for the General Insurance Company you made inspections for the State of Oregon, too, did you not?

A. Yes.

Q. And all inspectors were required to be able to make those inspections for the State?

A. That is right.

Q. And that required that license, did it not?

A. That is right.

Q. So you had certain duties that you performed for the State of Oregon in connection with your work?

A. I believe that that is rather misleading. We performed them for the insurance company, and the insurance company submits those reports to the

(Testimony of Robert E. Hoyt.)

State. That is sort of a mutual agreement to relieve the State of that duty.

Q. It is an inspection that has to be made according to State law and the service that the insurance company provides in the form of a licensed State inspector performs the service; isn't that true? A. That is right.

Q. In any event, as a Deputy Commissioner for the Bureau of [19] Labor, when you are licensed you have certain powers separate and apart from those granted by the insurance company, do you not?

A. I don't exactly understand you, but you have no powers—

Q. As a Deputy Commissioner?

A. That is right.

Q. Can't you, on the grounds that a boiler, for example, does not satisfy the requirements of the State code, issue an order to the owner of that boiler to shut it down? A. No, no.

Q. You don't have any such power as a Deputy Commissioner?

A. As a matter of fact, I have written orders from the State, the chief State inspector, as an insurance inspector not to shut any boiler down without telephoning him and in conjunction with the State inspector.

Q. That would be to the State inspector separate and apart from the insurance company, would it not? A. Yes.

Q. If you gave instructions as to how to repair

(Testimony of Robert E. Hoyt.)

a boiler, for example, and they refused to carry out your orders, what power would you have?

A. None whatsoever.

Q. You could not tell them that they couldn't continue to operate until they had repaired it in accordance with your instructions? [20]

A. You could tell them that, but it wouldn't be true, no.

Q. Now in the inspection work that you did, then, for the General Insurance Company you have mentioned that you inspected boilers and you mentioned that you inspected electrical machines. Did you also inspect other machinery? A. Yes.

Q. Did you inspect elevators, for example?

A. Yes.

Q. Did you inspect all kinds of steam engines as well as pressure vessels? A. That is right.

Q. Did you inspect all kinds of machinery—what kind of plants did you inspect, for example?

A. Oh, all kinds of plants.

Q. Sawmills? A. Sawmills; paper mills.

Q. When you would go into a sawmill would you inspect all the various kinds of machines that they had in there? A. If they were insured.

Q. If they were insured by the company?

A. Yes.

Q. You had to be able to look at the saws and the planers and everything that would be in there?

A. If they were insured, if they were covered, yes.

Q. If they were covered; that is right. And then

(Testimony of Robert E. Hoyt.)

in other [21] plants where they would have all kinds of electrical machines, why, you would inspect those of any description, would you not?

A. Yes.

Q. You would have to be able to run tests on those various kinds of machines, would you not, Mr. Hoyt? A. That is right.

Q. Now you have mentioned that you used a hammer in connection with your work. How would you use that hammer? What would you do with it?

A. Well, that is one method of determining broken bolts, and so forth.

Q. You didn't use it to hammer anything? You would tap it and make a noise; isn't that right?

A. Yes, in that respect.

Q. You didn't use the hammer to do any repair work or anything? A. No.

Q. It was a testing device?

A. That is right.

Q. You would tap on the boiler or whatever you were inspecting to see what kind of a sound it would emit; is that true? A. Generally.

Q. Now, did you in your work also use, for example, a strain gauge? [22] A. Yes.

Q. What kind of an instrument is that?

A. It is a gauge for showing the flexions of shafts and bearings.

Q. Does that require special skill to be able to use? A. No.

Q. You mean that anyone could use that instrument?

(Testimony of Robert E. Hoyt.)

A. With five minutes' instruction they could.

Q. What does the instrument reveal?

A. It is mal-alignment, to align the bearings.

Q. On all kinds of complicated machinery?

A. No, on a large part of them.

Q. Did you ever use a tachometer?

A. Yes.

Q. What kind of an instrument is that?

A. It is a measurement for revolutions.

Q. It is a revolution counter. Does that require any special skill or instructions to use? A. No.

Q. How about the data that you would obtain from a reading of that instrument? Would that require any special skill to interpret and know what it meant?

A. Well, very little. We had instructions books with formulas to work from.

Q. Were you familiar with those instruction books? [23] A. Yes.

Q. Were they engineering in character?

A. Yes.

Q. Did you use a vibrometer? A. Yes.

Q. And a megohmeter? A. Yes.

Q. And a volt and amp meter?

A. That is right.

Q. A thickness gauge? A. Yes.

Q. Did any of those instruments require special skill to be able to use?

A. I don't know what you are referring to as special skill, but with about five or ten minutes' instructions anyone could use them.

(Testimony of Robert E. Hoyt.)

Q. How about interpreting the data that would be obtained from them?

A. It was very simple.

Q. To be able to know from reading and the use of that data whether or not the machine was safe or unsafe or what was wrong with it and things of that sort?

A. That is right. We had a very comprehensive instruction book as to exactly what to do with it and how to interpret it.

Q. When you would take those readings would you know without [24] looking in your book whether or not there was something wrong?

A. Sometimes.

Q. Now, certain of these vessels required periodic inspections by law, did they not, as you have already mentioned? A. Yes.

Q. What kind of vessels or machinery required such inspections?

A. Boilers and pressure vessels.

Q. How often would they have to be inspected?

A. Boilers are inspected twice a year according to law.

Q. And they are inspected for what purpose?

A. Safety.

Q. In determining whether or not a pressure vessel is safe what do you do? You check what?

A. Well, damage, natural deterioration and corrosion.

Q. The valves?

(Testimony of Robert E. Hoyt.)

A. The working of valves and appliances.

Q. Do you have to make a determination as to whether or not the corrosion has reached an unsafe state or not, or things of that sort?

A. Well, a determination, yes.

Q. If you find that a valve, for example, is worn beyond what you feel is safe, then you make a recommendation that it be changed or replaced, or something of that sort; is that [25] true?

A. If it comes under that infraction we might be required to report it.

Q. Well, first you have to determine whether it should or should not be reported, do you not?

A. Yes.

Q. If you do not report it as being defective, then it is reported as being okeh or being all right?

A. That is right.

Q. Take the State inspection, for example. If you inspect a pressure vessel of some sort and you don't find anything wrong with it, then you send in a report indicating that it is in safe operating condition; is that true? A. Yes.

Q. Now does anyone have to come back and re-check you on that? A. Yes.

Q. Who and how?

A. Assuming that I am working for an insurance company, the various State inspectors would check up on me.

Q. What is the purpose of you making this State inspection?

A. That I couldn't tell you, unless it is just for

(Testimony of Robert E. Hoyt.)

the saving of—the State doesn't have the men to make all of these inspections.

Q. It would be a very rare thing for a State inspector to [26] come back shortly after you had looked at a vessel and make another second inspection of it, would it not?

A. It would be rare, but it has happened several times.

Q. All right. In the general routine, though, when you make those State inspections, even though employed by an insurance company, that inspection is one that satisfies the State requirements, does it not?

A. Yes.

Q. Now if you find in your inspection that there is something that you consider defective, then do you send that in on your State report?

A. If I am sending reports to the State, yes, I would.

Q. In other words, if you were making one of these semiannual reports to the State and you found something wrong, you would then notify the State in your report, would you not?

A. That is right.

Q. And, at the same time, if you were working for an insurance company you would notify the insurance company of that condition?

A. Yes.

Q. Now, Mr. Anderson asked you how you inspected a boiler. When you go out to make one of these inspections you don't do the work of opening up the boiler or cooling it down, or anything of that sort? [27]

A. No.

(Testimony of Robert E. Hoyt.)

Q. You would notify them that you were coming on a particular day? A. Yes.

Q. Then they would have their workmen shut the machine or the boiler down and open it all up to be ready for your arrival?

A. Theoretically, yes, but as a rule during their cleaning period they would notify me that they had the boiler open.

Q. In other words, rather than make them shut down their operations, you would wait until they were going to clean it and then they would notify you and you would come out and make the inspection yourself? A. That is right.

Q. But you would not do the actual physical labor yourself of opening it up, or anything of that sort? A. No.

Q. When you went to work for the insurance company, for the General Casualty Insurance Company, as you have stated, you were given a territory; is that true? A. That is right.

Q. Would that be more or less a geographical territory? Is that what you mean? A. Yes.

Q. How many inspectors were there in Portland at that time? [28] A. Four.

Q. And how many were there in the State of Oregon?

A. I don't know. I believe there were five.

Q. There would only be one or two others than the ones that were in Portland; is that not true?

A. Yes.

Q. From the Seattle office the whole Northwest

(Testimony of Robert E. Hoyt.)

area was included, was it not? A. Yes.

Q. Montana and Idaho—what were there, three or four states? A. I don't know.

Q. In any event, for the State of Oregon there were approximately five inspectors? A. Yes.

Q. When you first went to work for the General Casualty Company in Oregon, was Mr. Bogardus your immediate superior? A. No.

Q. Who was? A. Gene DeVoe.

Q. Who was Mr. DeVoe? What position did he hold? A. He was the Oregon manager.

Q. Under him he had what—the whole division?

A. In Oregon?

Q. Yes. [29] A. Yes.

Q. What all did he have under him, do you know? A. I don't know.

Q. Would the boiler inspectors just be one small part of the people that would be immediately under him? A. Yes.

Q. When you first went to work there was no engineer over you in Oregon, was there?

A. Yes, there was.

Q. Who? A. W. C. Smith.

Q. Beginning with the time in question, then—that would be in March of 1954—was there anyone who was an engineer over you in Portland?

A. Yes.

Q. Who? A. Charles Brown.

Q. Mr. Brown. What was his title in March of 1954?

A. Well, I imagine it was Oregon supervisor.

(Testimony of Robert E. Hoyt.)

Q. He didn't receive that title until later on in 1954; isn't that correct? That is, the end of 1954?

A. I can't say about that.

Q. Wasn't there a period of time, Mr. Hoyt, there for eight or nine months, or whatever it was, beginning in March of 1954, when there was no engineer in Oregon that was over [30] you engineers?

A. There was a supervisor from Seattle that was down here.

Q. That was Mr. House?

A. No, that was Frank McKeown.

Q. He was in Seattle? He was an engineer?

A. Yes.

Q. During that period of time that Seattle engineer was the only engineer directly over you; isn't that true?

A. Well, I am not sure about that.

Q. Then later on Mr. Brown was given the title of Oregon supervisor, or whatever the title was?

A. I don't know just when that was, but that was shortly after Mr. Smith left.

Q. During that time isn't it a fact, Mr. Hoyt, that the only person in Oregon who was directly over you was Mr. Bogardus? A. Yes.

Q. He wasn't an engineer, was he?

A. I don't believe so.

Q. He never went out on any inspections or knew anythink about engineering?

A. I don't know what his intelligence is on engineering, but he didn't go out on inspections.

(Testimony of Robert E. Hoyt.)

Q. Did he ever consult with you to receive advice concerning engineering problems? [31]

A. No.

Q. Weren't you engineers experts in the engineering line, and wasn't he more or less in an administrative position?

A. That word "expert" is not correct. We had simply routine inspections. If there was any experting to be done, we referred it to the Seattle office.

Q. Did you ever consult with Mr. Bogardus concerning technical problems in engineering?

A. No.

Q. In any event, when you went to work, commencing in the time we are talking about, March of 1954—let's begin with that time—at that time there wasn't any engineer in Oregon that was telling you how to do your work; isn't that right?

The Court: We will take five minutes.

(Short recess.)

Q. (By Mr. Williamson): Mr. Hoyt, when you went to work for the insurance company and they gave you this geographical area, you were then given a series of yellow cards, were you not, that had the name of the insured and the equipment and so on that you were to check on them?

A. Yes.

Q. Then you would take those yellow cards and plan out the way that you were going to go through your territory and make an itinerary? [32]

(Testimony of Robert E. Hoyt.)

A. Yes.

Q. You were not always able to keep right to that schedule because a shop might call up, or an emergency, or something of that sort, and you would have to go in and call on them?

A. That is right.

Q. Or there might be other things that would arise? A. That is right.

Q. But, generally speaking, you would plan your own itinerary when you would get an assured and work that all out with the assured yourself; isn't that true? A. Yes.

Q. When you would go out on one of these visits, say the first time particularly when you had a new assured for the first time, when you would first arrive out there what was the first thing you would do? Would you go and see the management?

A. Yes.

Q. And what would you discuss with the management?

A. We wouldn't discuss anything with him. You would tell him you were there and, as a rule, let him know you were in the plant—in other words, ask his permission to go in his plant.

Q. The great percentage of the time would you be alone as far as the insurance company was concerned?

A. That depends on the size of the plant. As a rule, with [33] a large plant, it was customary for two men to go. At one time we had four men together.

(Testimony of Robert E. Hoyt.)

Q. Would you say that about 90 per cent of the time you would be alone on these inspections you would make? A. Yes.

Q. All right. So then you would go out and you would see the management. Now, on a first inspection, where you had a new assured, before you would go out and actually start inspecting the boilers or the machines you had other, more general, inspections to make, did you not, such as to see what the housekeeping of the plant was, for example?

A. No, we never bothered with that.

Q. Would you try to make an effort to size up the personnel and see how they were operating the machines and if they were doing it properly or not?

A. I did that personally, but that was not a company order.

Q. Wasn't that something that you were interested in finding out? A. Yes.

Q. Would you size up the kind of maintenance program that they had in effect at the plant?

A. That was taken care of.

Q. But would check to see what kind or means of repairing that they would have available in the event of a breakdown?

A. That was required in the policy forms. [34]

Q. Would you make recommendations as to the training of personnel that they might employ to advantage? A. No.

Q. Would you help them in their loss-prevention programs?

(Testimony of Robert E. Hoyt.)

A. What do you mean by help them?

Q. Help them set up and plan their programs for loss prevention in the training of personnel, and so forth?

A. We would give them the benefit of our experience in the form of suggestions.

Q. Yes. In other words, you might make the suggestion that they put an additional man on for some particular reason, or something of that sort?

A. No, no.

Q. You would make suggestions as to the kind of an inspection service they ought to have themselves, or things of that sort?

A. Sometimes.

Q. Did you ever assist them in training personnel? A. No.

Q. You just made some suggestions as to what they might do to advantage? A. Yes.

Q. Now, if you found that the plant as a whole was deficient in some of the things that I have just discussed you, their maintenance program, their means of repairing, their training [35] program, and so on, would you make reports of that to the company if you found it to be unsatisfactory?

A. Yes.

Q. When you would make a recommendation to the company or a report to the company, would that, in turn, then be communicated to the assured—that is, your recommendation?

A. That depends on what the underwriters and the chief inspectors thought of it.

(Testimony of Robert E. Hoyt.)

Q. Now, you spoke about the reports that you make. When you would first go to a plant and you did make your inspection of the machinery, you would make out an initial report form; is that true? A. Yes.

Q. Was that on a form for the State that was provided by the insurance company?

A. The State only required internal inspections on boilers and pressure vessels. It was very seldom that you ever got an internal inspection on your first visit.

Mr. Williamson: Will you hand the witness Defendant's Exhibit 1.

Q. That Exhibit No. 1 for Identification that you are holding, Mr. Hoyt, is that the form that you used for your initial report?

A. Yes, similar to that.

Q. Now, is that a similar form to the one that was sent in [36] to the State of Oregon?

A. No.

Q. That is similar to the one that was sent to the company, however? A. Yes.

Q. Now, when you put something down here under "Remarks" what information would you put in that blank?

A. Usually the attitude of the management and his facilities for making repairs.

Q. Things of the sort that we have just been discussing? A. Yes.

Q. In addition to that, when you would make out

(Testimony of Robert E. Hoyt.)

these reports, say for the initial report, would you make recommendations to the company as to technical matters?

A. What sort of recommendations?

Q. Like the particular machine should be repaired in some particular way, or that it ought to be cleaned out, or things of that sort?

A. Yes.

Q. Now, if the particular machine or boiler, or whatever it was, was satisfactory, you would so indicate on your report to the company, would you not?

A. Yes.

Q. Insofar as the insurance company was concerned, when you finished with your inspection and if you had recommendation [37] to make, what would you do? How would you physically go about doing that? You would come back to the Portland office and dictate a letter to the girl, would you?

A. No, we would go write it out with pencil by ourselves.

Q. You would write it out. That would then be given to a girl to type up?

A. Is this for a company report?

Q. Yes, your own company report.

A. No, it would be mailed that way.

Q. Who would mail it? A. I don't know.

Q. I mean would you mail it yourself?

A. No.

Q. It would be mailed from the office the way you wrote it? A. Yes.

Q. In your own handwriting? A. Yes.

(Testimony of Robert E. Hoyt.)

Q. A copy would come to the Portland office?

A. No.

Q. You would be the one to keep the copy for the Portland office?

A. There is quite a number of reports there. As a rule, recommendations like that, there was only one copy made and it was sent to Seattle. Now at various times or another they [38] changed that procedure.

Q. Let's take the time of March of 1954, up until the time that you left? A. Yes.

Q. Was the procedure changed during that interval of time? A. Yes.

Q. Tell us the procedure when you first started, then. Let's take this kind of an example. You went out and you made an inspection and you had certain recommendations to make in regard to the machinery that you had inspected. Then you would do what? You would make out a report?

A. I would put the report in the mail for the Seattle office.

Q. Did a copy of it go anywhere else?

A. I don't know.

Q. Was that procedure changed then?

A. Yes.

Q. How was it changed?

A. We would file our reports at Portland here, and, as I understood it, they were not mailed to Seattle.

Q. All right. Do you know when that change went into effect?

(Testimony of Robert E. Hoyt.)

A. Not exactly, but it was—

Q. In 1954 sometime? A. Yes. [39]

Q. Now, under that system you made your report and it was filed in Portland? A. Yes.

Q. Where did the copy go?

A. I imagine a copy went to the assured.

Q. All right. A copy went to the assured the way you had written it up, did it not?

A. No. Now, the wording, the English and so forth, was digested and changed accordingly.

Q. Who changed it? A. I don't know.

Q. Did you ever see any of the reports received by the assureds? A. Yes.

Q. Were they still the way you had written them up? A. No.

Q. They never were?

A. I don't ever remember of seeing one in my words, no.

Q. Would the reports when you would see them after they had reached the assured contain the same recommendations that you had made?

A. Sometimes.

Q. What was the fact, Mr. Hoyt? Can you ever remember an occasion when they were changed from the way you had recommended them? [40]

A. Yes, I can remember occasions.

Q. Can you give the Court some idea as to how frequently that occurred? Would that be on rare occasions?

A. Oh, I would say maybe—you understand, there were not many of these company reports I

(Testimony of Robert E. Hoyt.)

have seen after they were sent out, but perhaps 50 per cent of them were changed.

Q. You kept a copy of the recommendations that you had made, did you not, for a particular plant or machine? A. Yes.

Q. When you went back to the plant would you check to see that your recommendations had been complied with? A. Yes.

Q. What was the fact as to whether or not your recommendations would have been complied with?

A. What was that again?

Q. When you would go back what is the fact as to whether or not these assureds would comply with the recommendations that you had made?

A. Well, if they had not complied, it would just go in the next report. And if they had, why, that would also go in that report.

Q. As a matter of practice, did they comply with your recommendations in the great majority of cases?

A. No. I would say about 50 per cent of them.

Q. Is that true of the recommendations that you made that [41] went in to the State of Oregon, too?

A. That is a different matter.

Q. How is that different?

A. Well, that is different in this respect: There is a State law concerning those boiler recommendations, and if it is a matter of safety they are not issued an operating permit until it is corrected.

Q. So at least as to those recommendations that

(Testimony of Robert E. Hoyt.)

you would make for the benefit of the State of Oregon they would be complied with?

A. Generally; not always.

Q. When you had recommendations to make, would you oftentimes discuss those recommendations with your assured? A. Yes.

Q. And how would you have to handle that? Would you have to be diplomatic?

A. As diplomatic as possible.

Q. Would you have to be careful to try to handle them in a way that would be advantageous to the company as well as satisfactory from an inspector's standpoint?

A. Well, it had to be handled so as not to be as disagreeable as possible to the assured.

Q. You had to know your men that you were dealing with, did you not?

A. If possible. However, a recommendation was a recommendation, [42] no matter what the man was.

Q. I know, but didn't you have to know your men, and didn't you have to be careful to see that your man wanted it straightened out or not, or if he was going to humor an unsafe condition, and things of that sort?

A. No; if it was an unsafe condition, it had to be reported, regardless.

Mr. Williamson: May I have the witness' deposition handed to him, please?

Q. Would you look on Page 27, please, Mr. Hoyt. Do you recall, Mr. Hoyt, when I took your deposi-

(Testimony of Robert E. Hoyt.)

tion on May 17th, when Mr. Anderson was there and I was there? A. Yes.

Q. In your attorney's office? A. Yes.

Q. On page 27, about the middle of the page, do you recall my asking you these questions:

“Q. Well, how would you know whether or not a boiler was safe?

“A. Well, if it was deteriorated, eaten away, corroded, full of scale or had the safety valve plugged or something, I would consider it unsafe.

“Q. Would you sometimes talk to the assured about those conditions without phoning Seattle? [43]

“A. Oh, yes. Yes. Numerous times things like that happened that the assured knew nothing about.

“Q. You would point them out to the assured?

“A. That's right.

“Q. And ask him to straighten it out?

“A. Well, you had to be very diplomatic about that. You had to know your man. See if he wanted to straighten it out or not, or if he was going to humor an unsafe condition and jeopardize the company.

“Q. Then you would have to be more firm?

“A. Well, then that is when I would dump it in somebody else's lap and back out gracefully.”

Do you recall that? A. Yes; that is correct.

Q. Are those correct statements, Mr. Hoyt?

A. Yes, they are.

Q. Now, you had the Weyerhaeuser plant as one of the plants that you inspected in your territory, did you not? A. Yes.

(Testimony of Robert E. Hoyt.)

Q. Where was that located?

A. At Longview.

Q. Now, for policy reasons you made a lot of inspections up there, did you not? [44]

A. Yes.

Q. I have used the term "policy reasons," although I have taken it from you. What is meant by that, for policy reasons that you would go there frequently?

A. Well, as an example in that plant my orders was to give them service regardless of what it was, even though it wasn't covered by insurance and had nothing to do with our inspections or anything.

Q. In other words, any time they wanted your service, advice or suggestions, why, you were supposed to make that advice, service and suggestions available? A. Yes.

Q. Did you do that? A. Yes.

Q. And would you be alone frequently when you would go up to make those recommendations and so on? A. Yes.

Q. Lots of times you would stop what you were doing and go up and consult with them about matters? A. That is right.

Q. Now, there was some mention made on your direct examination about suspensions, and calling Seattle concerning suspensions, and so on. But that would be a very, very rare occasion, when there would be a suspension; isn't that true, Mr. [45] Hoyt?

(Testimony of Robert E. Hoyt.)

A. I don't know exactly how rare, but it has happened quite often.

Q. Now, by a suspension do you understand that I refer to advising the assured that by reason of their failure to comply with the recommendations that their insurance is suspended?

A. That is right. Not the entire policy, but the insurance on that particular object or machine.

Q. Now, you avoided suspensions by getting co-operation out of your assured to work these matters out, did you not? A. Yes.

Q. On occasion would you consult with the agent who had sold the policy to the assured?

A. No.

Q. Have you ever had occasion to suspend a risk during the time that we are talking about, from March of 1954 to May of 1955? A. No.

Q. Have any of the risks that you inspected, to your knowledge, ever been suspended during that period of time?

A. Various pieces of machinery and equipment; yes.

Q. Can you name some of them for us, please?

A. Yes. I can name you a couple of motors from a sawmill.

Q. Where was that?

A. Warm Springs Lumber Company.

Q. What occurred there? [46]

A. Well, it was just a matter of the owner refused to fix up his machinery. He decided it wasn't necessary, and the objects were taken off the policy.

(Testimony of Robert E. Hoyt.)

Q. Where was this located? At Warm Springs?

A. Yes.

Q. Who made that inspection?

A. At that time Chief Engineer Stevens.

Q. Were you there with him? A. Yes.

Q. Had you originally reported the recommendation? A. Yes.

Q. And the owner had refused to comply with your recommendation? A. Yes.

Q. So eventually it got to the point where the machines were actually suspended? A. Yes.

Q. Now, ordinarily you avoided that sort of a situation, did you not, or tried to, Mr. Hoyt?

A. Yes.

Q. Would you refer to Page 19 of your deposition, please, in the middle of the page, where I asked you:

“Q. Along that same line, as I understand it, why, on occasion if you found that something wasn’t quite right, why, you would go and visit [47] the agent and see that everything was smoothed over?

“A. If we had time.

“Q. Uh-huh. You had occasion at various times to discuss matters with the agent and try to keep everything smooth? A. Yes.

“Q. The same thing with the assureds, to try to keep things going smooth?

“A. Yes; that’s right.”

Do you recall my asking you those questions?

A. Yes; but that was in a different vein. That was in such a case that I felt that the assured was

(Testimony of Robert E. Hoyt.)

hostile, and may cancel his policy, then he deals directly with his agent, and it was up to the agent then to handle it.

Q. But you would on occasion consult with the agent, would you not?

A. Under those circumstances, if the assured was on the peck or hostile towards any suggestions or anything.

Q. Then you would meet and talk with the agent about it and try to get it worked out so that it could be taken care of?

A. I would set forth what the situation was; yes.

Q. When you would go to the agents, would they sometimes ask your advice concerning the matters in connection with the [48] assureds?

A. What do you mean by advice? Concerning what?

Q. Concerning the risks or concerning the quotation of rates on machines, and things of that sort.

A. Yes; they would.

Q. Did you have that information so that you could give it to them?

A. I would have to contact the underwriters on that sort of thing.

Q. Did you have a lot of that information yourself that you were personally familiar with as to rates?

A. Oh, working with the company like that, I got acquainted with them, but that was not part of my job. And they had so many various rates, depend-

(Testimony of Robert E. Hoyt.)

ing upon the policy and the agents, and one thing and another, I never attempted that.

Q. Didn't you have encouragement from Mr. Bogardus, the man in charge of the entire area, of which the engineers were one part, to push the insurance program?

A. To push the insurance program?

Q. Yes.

A. Well, yes; but not to make any quotes as to rates.

Q. Now, would you refer to Page 14 of your deposition. At the top of the page, in speaking about the instructions that Mr. Bogardus did give you, perhaps once a month or every two months, then: [49]

“Q. Would you say that he gave you on an average of once every month or two months an instruction of some sort? A. Yes.

“Q. What kind of instructions did he give you?

“A. Oh, usual pep talks to call on the agents and drum up a little business and one thing and another.

“Q. Sort of like a sales meeting to get everybody enthused? A. That is right.”

Do you recall my asking you that? A. Yes.

Q. Are those true answers? A. That is true.

Q. In other words, then, Mr. Bogardus did talk to you engineers about calling on the agents and trying to work up business for the company, and things of that sort? A. Yes.

Q. And did you do that?

A. On occasions, when we had time, we would

(Testimony of Robert E. Hoyt.)

call on the agents. But you ought to understand that that came in in the later stages of my employment there. At one time it was a policy that we should spend 25 per cent of our time in the agent's office. But I never did do that, because I [50] was continuously behind with my work all the time.

Q. I see. Now, the recommendations that we have been talking about that you would make following your inspections would sometimes concern, as I think you have said, technical matters such as getting rid of scale, improvement of valves, making repairs and things of that sort; is that correct?

A. That is correct.

Q. Also, did you ever make any recommendations, for example, that there ought to be a deductible type policy on this particular assured or on this particular piece of equipment?

A. Yes; I believe I have.

Q. What would you mean by that?

A. Well, when a plant was having too many accidents, the same as a deductible on your automobile, that he would stand the first \$100 or the first \$1,000 loss himself.

Q. In other words, to save the company money on that particular risk a deductible would be proper and advantageous? A. Yes.

Q. Did you ever make any recommendations that the company get off the risk entirely?

A. I don't recall that I did.

Q. Would you ever make any other kind of

('Testimony of Robert E. Hoyt.)

underwriting recommendations as to a particular assured other than like a deductible?

A. Well, I don't know. I wasn't an underwriter, and I [51] wasn't very familiar with the procedures.

Q. In the event of a breakdown or, in other words, in the event of a loss, Mr. Hoyt—let's say that there was a use and occupancy coverage; in other words, that you had coverage on the plant that while it was out of production that the insurance company would reimburse for losses due to loss of income while it was out of production, assuming you had that kind of a loss what would you do on receiving advice that such a breakdown had occurred?

A. Well, our main job was to find them an additional piece of machinery; for instance, an electric motor. We had lists of various people, various plants, that had those in storage and we would inform them where they could get one as a replacement.

Q. Now, then—did I interrupt you? Go ahead.

A. No; you didn't interrupt me.

Q. Would you render assistance in getting people in there to make the repairs?

A. What sort of assistance?

Q. As to where they might go to find trained personnel that could do the work, or things of that sort? A. No; no.

Q. Did you ever make any recommendations at all as to the people who could do some of this repair work to get the plant back into operation? [52]

(Testimony of Robert E. Hoyt.)

A. I never recommended anyone, but I told them where they could find a man that could do it, possibly. That is, different parts or supplies, and so forth.

Q. In other words, you would not make any commitments for the insurance company?

A. No.

Q. Didn't you give suggestions and recommendations to the assured to try to assist him in getting the plant back into operation?

A. As much as I could, as much as I knew without committing myself.

Q. If you didn't have that use and occupancy type of coverage, so that it was just a matter of a machine being burned out, or something of that sort, where there might be a loss that would be covered by the insurance, what would you do in those cases? Would you make an inspection?

A. Yes, we would make an inspection and write up an accident report.

Q. Would you try to determine the cause?

A. Yes.

Q. Would you try to make recommendations as to preventive measures that could be taken to prevent such a thing from happening in the future?

A. If the cause could be determined.

Q. Would you assist in that determination? [53]

A. Yes.

Q. Now, as far as making contacts with Seattle is concerned, you would frequently go for several

(Testimony of Robert E. Hoyt.)

months without ever having occasion to make any contacts with Seattle, would you not?

A. That is right.

Q. Frequently you would go maybe several weeks without even making contact with the Portland office?

A. No, as a rule we were in the Portland office at least once a week.

Q. Was it your custom to return home at the end of the day each day?

A. If I was close enough to home, yes.

Q. When you first started working for General, did you receive any instructions in that connection?

A. No.

Q. Did you receive any instructions in the planning of your work, to try and plan it so that if you were out of town you would stay in that area and get the work accomplished before returning back to Portland?

A. Our instructions on that was when we started on, for instance, a sawmill to stay there and complete the mill.

Q. Those were the instructions that you were given; isn't that true? A. Yes. [54]

Q. Now did you ever violate those instructions?

A. No.

Q. Did you receive criticism for not following those instructions? A. No.

Q. Was your employment with the General Casualty terminated voluntarily or involuntarily?

A. Involuntarily.

(Testimony of Robert E. Hoyt.)

Q. Wasn't one of the reasons that you were given as to the reasons for your termination the fact that you had not complied with the company's instructions about staying away from the office and getting work done in a particular area?

A. That is true. Let's go back to your other question a minute here. You said when I first started working with the company what my instructions were. Later on they had a change of engineering policy on everything, and about the last six months or so they had a complete change of policy there. Then that was when the criticism came in.

Q. That would be commencing when, Mr. Hoyt?

A. When Frank McKeown—

Q. Can you give us the approximate period of time? A. Oh, I would say in the last year.

Q. In other words, commencing in what? The middle part of 1954?

A. I don't know exactly, but you can find out. Whenever [55] Frank McKeown had charge of the engineers up there. I would say it might have been in the middle of '54, yes.

Q. Do you think it was maybe earlier than that?

A. It wasn't very long.

Q. In other words, your employment with the General Casualty ceased in May of 1955?

A. That is right.

Q. As I understand it, you say that about a year before that time there was this change in policy concerning your instructions about going

(Testimony of Robert E. Hoyt.)

away on the road? A. Yes.

Q. Now, were the instructions that you were given that if you went up to Longview, for example, you would stay up there until you got the Longview work finished?

A. That is correct. That is correct.

Q. Did you do that?

A. As far as possible.

Q. Or were you in the habit of returning to your home in Portland at the end of the day?

A. I had been in the habit of returning home, but when they gave me instructions to stay there I stayed there as long as the work required it.

Q. Now you said that when you first went with the company you were making out these sheets as shown in Exhibit No. 1. Is that right? [56]

A. That is right.

Q. Those included travel time? A. Yes.

Q. Now, on the two-week sheets as shown in Exhibit No. 2, do those include travel time?

A. No.

Q. They do not? A. No.

Q. You say that there was a change in the company policy from the time that you changed from the type in Exhibit 1 to Exhibit 2? A. Yes.

Q. And at the time that you were making Exhibit 1 your instructions were to include travel time? A. Yes.

Q. I will hand you what has been marked as Plaintiff's Exhibit No. 6. What is the date of that document? A. December 29, 1950.

(Testimony of Robert E. Hoyt.)

Q. Now the bottom paragraph of that document reads how?

A. "The time recorded on inspections is to be the time spent by the inspector in the plant inspecting objects of the type in question and discussing plant problems with respect to such objects."

Q. Were those the instructions that you are referring to when you were making out Exhibit No. 1? [57] A. Yes.

Q. And yet those instructions say that you are only supposed to record time spent in the plant?

A. Those forms are so marked for travel time there.

Q. But you claim that these in Exhibit No. 2 do not include travel time? A. No.

Mr. Anderson: Just one second. Do you mean No, it does not include travel time, or what did your answer mean?

A. I mean No, we were not supposed to put travel time in on that.

Q. (By Mr. Williamson): Did you put it in?

A. Not when I thought about it. Sometimes I perhaps did.

Q. Now, here in Exhibit No. 2, for example, under date of 4-14-55 it says travel time, three hours. A. Yes.

Q. Then just above that, on 4-13, travel time, three hours. That is 4-13, to Longview, three hours; and on 4-14, to Longview, travel, three hours. On

(Testimony of Robert E. Hoyt.)

4-6-55, travel time to Longview, one hour; 4-8, travel time, two hours; 4-10, travel time, three hours; 4-11, travel time, one hour. A. Yes.

Q. Have you looked at these documents in Exhibit No. 2, Mr. Hoyt?

A. Not lately, but I am well aware of what it contains. [58] We did start making those without instructions, and then the instructions were changed later on.

Q. Now, Exhibit No. 3, which are these time records, is that supposed to fill in the gap between what is in No. 1 and No. 2?

A. Not only the gap, but that also includes those.

Q. Didn't you have other copies of the time records in Exhibit No. 2 than those that you have here? A. No.

Q. Have you produced all of the ones that were made? A. On that particular one?

Q. Yes.

A. I have produced all that I have.

Q. All that you have. But there were others that were made, were there not, Mr. Hoyt?

A. I couldn't tell you that, but I believe that is all of them.

Mr. Williamson: Would you mark those, please.

(A group of documents headed "Boiler and machinery Inspector's Record of inspections" was marked by the Clerk as Defendant's Exhibit 2 for Identification.)

(Testimony of Robert E. Hoyt.)

Q. (By Mr. Williamson): Do I understand that you were told to stop making reports on the kind that appears in Exhibit No. 1, and then there was a gap or a time interval before you [59] started on Exhibit No. 2? A. That is correct.

Q. Do you remember what that time interval was? A. No, I don't.

Q. Now, what you hold in your hand, Defendant's Exhibit No. 2 for Identification, are those these same time sheets that you had reference to; that is, in Plaintiff's Exhibit No. 2? A. Yes.

Q. Are those made out in your handwriting?

A. Yes.

Mr. Williamson: I will offer them in evidence.

Mr. Anderson: No objection.

The Court: Admitted.

(The group of records above referred to, having been previously marked for identification, was received in evidence as Defendant's Exhibit 2.)

Q. (By Mr. Williamson): Now, on what date does that top one commence? A. 7-15-54.

Q. You don't have any 7-15-54 in here, do you?

The Court: Recess until 1:30.

(Thereupon, a recess was taken until 1:30 o'clock p.m. of the same day.) [60]

Afternoon Session

(Court reconvened at 1:30 o'clock p.m., pursuant to the noon recess, at which time proceedings herein were resumed as follows:)

ROBERT E. HOYT

resumed the stand as a witness in his own behalf and was further examined and testified as follows:

Cross-Examination
(Continued)

By Mr. Williamson:

Q. Mr. Hoyt, did you have a chance to look at Defendant's Exhibit 2 that you now hold in your hand to see that those were records that you had submitted to the company that covered a portion of this period that you indicated was covered by Exhibit No. 3, those pamphlets? A. Yes.

Q. Those records are ones that you made, the same as Exhibit No. 2 of plaintiff, but they just encompass a greater period of time; isn't that right?

A. That is correct.

Q. Were those records accurate records?

A. Accurate in what way?

Q. As to time?

A. Yes; they were accurate as to covering the inspections.

Q. Did those include travel time? [61]

A. No, not always. I can't recall the date, but we had orders to exclude travel time from these reports.

(Testimony of Robert E. Hoyt.)

Q. No; I mean as a matter of practice they were included in your report, were they not? In other words, if you got up in the morning and left town at 8:00 o'clock, you started keeping track of your time from 8:00 o'clock until you got back at the end of the day; isn't that right?

A. That is correct, for total time; yes.

Q. Now, when you first started with General you were told that you were not to keep overtime; is that correct? A. That is correct.

Q. Those records that you hold in your hand and the other ones that have been indicated were not kept for purposes of compensation, were they?

A. I don't believe so.

Q. Those were records that were kept for the purpose of giving information for the establishment of rates and determining the cost of making inspections on particular risks and that sort of information, were they not?

A. I believe that is correct.

Q. But they were not in any way kept for purposes of determining your salary or your earnings or anything of that kind?

A. I don't know what happened to them nor why, but they could be used for anything that you wanted to. [62]

Q. Was it your understanding that that was the purpose that they were kept for, was compiling rates? A. Yes.

Q. When you first went to work for General were you told that you were only expected to work

(Testimony of Robert E. Hoyt.)

a 40-hour week? A. No.

Mr. Williamson: Would you hand the witness his deposition, please?

Q. Would you look on Page 39, please, a little above the middle of the page, where the question is:

“Q. But you didn’t ever, for the reason you have already stated, go back to General and talk to them about the matter any further?

“A. No. No. As a matter of fact, this last supervisor they had in Seattle, Mr. McKeown, said that we were only expected to work 40 hours a week, but we had to work if it was necessary, if it was Sundays, holidays and nights, but we were supposed, theoretically, to get that time back if we ever got a chance to get it back.

“Q. You mean he told you that 40 hours was the week you were supposed to put in?

“A. Yes; that’s right.”

Do you recall those questions being asked you?

A. Yes; I do. [63]

Q. Are those correct answers?

A. That is correct, but that happened after I had been working there over three years.

Q. When was Mr. McKeown there?

A. I don’t recall the dates, but he was there, I imagine, about a year.

Q. From about the middle of 1954 on, he was the chief, was he not?

A. That was my understanding.

Q. And that was what Mr. McKeown told you?

A. Yes.

Q. Now, to clear this up, Mr. Hoyt, you were

(Testimony of Robert E. Hoyt.)

told that you were supposed to work a 40-hour week, and you were supposed to plan that out as best you could? A. That is right.

Q. And when you first went to work for the General you submitted overtime figures, and they told you not to do that any more; that you would not be receiving overtime? A. That is right.

Q. I wanted to get this clear. Now, when you gave assistance to these assureds, that was advice and suggestions; that was not manual work that you gave them? A. That is correct.

Q. Your salary was \$400 a month after you got your raise from \$325, or whatever it was? [64]

A. That is right.

Q. Did you receive any other salary or compensation?

A. That was the total salary. We received a bonus provided the company made money, and so forth.

Q. How much was the bonus?

A. It amounted to two weeks' pay three times a year.

Q. At \$400 a month that would give you \$200 in your bonuses? A. Yes.

Q. So for three times a year you got \$200?

A. Yes.

Q. Although that was a bonus, did you receive that regularly during the time you were so employed?

A. During the time I was there I did.

Q. Just before coming to work for General you

(Testimony of Robert E. Hoyt.)

had worked for the Lumbermen's Mutual as a boiler inspector doing the same type of work that you did when you came to General?

A. That is right.

Q. You testified you were given overtime pay for the time you worked for Lumbermen's?

A. That is right.

Q. But you didn't make any claim for that overtime until after you quit Lumbermen's, did you?

A. Yes; prior to the time I quit they sent out overtime forms for us. [65]

Q. And you made a claim after you quit?

The Court: Mr. Williamson, that doesn't make any difference under the Wages and Hours Act. He is either entitled to it or he is not entitled to it. It doesn't make any difference whether a man claims it or not. It doesn't make any difference whether he claims it in good faith or not.

Mr. Williamson: I agree with your Honor. The only purpose of the question was to show that the man did have some understanding and knowledge of the subject.

The Court: What has that got to do with it? The law is inflexible, rigid.

Mr. Williamson: I think that is all I have, your Honor.

(Testimony of Robert E. Hoyt.)

Redirect Examination

By Mr. Anderson:

Q. Now, Mr. Hoyt, when McKeown said to you that you were only working 40 hours, did he cut down on the amount of work that you had to do?

A. No; he increased it.

Q. Was it possible to do the work you did in less than the hours which you put in for?

A. No; absolutely not.

Q. To what extent was your work increased at that time? [66]

A. At one time it was doubled.

Q. When was that?

A. That was after they discharged a couple of inspectors and before they got anyone to take their place or anything.

Q. You were definitely instructed by your employer not to report overtime to the Seattle office?

A. Yes.

Q. During that period you have kept an accurate account of your overtime, have you? A. Yes.

Q. That account is reflected in Exhibit No. 3 here? A. That is right.

Q. Now, Counsel was asking you about your directions to your insured people about making repairs. I would like to hand you Exhibit No. 4 and ask you whether or not it is not a fact that your employer gave you specific directives not to obligate the company in any way on repairs?

(Testimony of Robert E. Hoyt.)

A. Yes; that is correct.

Q. And is that the directive you have in your hands, Exhibit 4? A. Yes.

Q. That was made in 1949, I believe, was it not?

A. Yes.

Q. Did that rule continue throughout your employment?

A. Yes; that was a standard rule. [67]

Q. On the occasions when an object under a policy would be suspended—I think you mentioned the Warm Springs Lumber Company. Do you know why the chief inspector accompanied you out there to suspend that object?

A. Yes. It was in very bad condition, and we were having a lot of losses on it. And that was the usual practice, whenever they were what we called a bad risk, with a lot of losses, and so forth, the chief inspector would usually go out and look it over to see if—to check on our report, and so forth.

Q. Are you familiar generally with the procedure in inspecting boilers and handling this type of work throughout the various states?

A. Yes.

Q. Is the method used in Oregon by your company generally of the same character as inspections made throughout other states in the United States?

A. Yes.

Q. It is sort of a uniform program, is it not?

A. Practically; yes.

Q. Now, the insurance companies recruit their

(Testimony of Robert E. Hoyt.)

inspectors, do they not, generally from operating engineers and marine engineers?

A. Yes; that is right.

Q. And generally the operating engineers are licensed [68] personnel, are they not?

A. Sometimes; yes.

Q. In the State of Washington?

A. Yes; that is right.

Q. Even firemen are licensed in Seattle, are they not? A. Yes.

Mr. Anderson: I think, your Honor, we are prepared to rest except as to this matter of attorney's fees. I have asked Counsel for a stipulation that if the plaintiff prevails the Court may, in its discretion, fix a proper fee.

Is Counsel willing to so stipulate?

Mr. Williamson: I am, your Honor.

The Court: What kind of insurance have you been talking about?

The Witness: Casualty insurance.

The Court: Not fire?

The Witness: No; no, sir.

(Witness excused.)

Mr. Anderson: We rest, your Honor. [69]

J. G. HOUSE

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williamson:

Q. Will you state your name, please?

A. J. G. House.

Q. Where do you live, Mr. House?

A. Bothell, Washington.

Q. By whom are you employed?

A. Simpson Paper Company.

Q. In what capacity? A. Plant engineer.

Q. How long have you been so employed?

A. About six months.

Q. Where were you last employed?

A. Prior to Simpson?

Q. Yes.

A. Marsh & McLennan.

Q. How long did you work for them?

A. Three years.

Q. Where did you work before that?

A. General Casualty Company.

Q. How long did you work for General Casualty Company?

A. Approximately eight years. [70]

Q. Terminating at what time?

A. December, 1952.

Q. At the time that you were last working for General Casualty Company what was your position?

(Testimony of J. G. House.)

A. Chief inspector or manager of the Boiler and Machinery Department.

Q. Where was your office? A. Seattle.

Q. What personnel were under your supervision?

A. All of the Boiler and Machinery Department inspectors, underwriters, and so on.

Q. How many inspectors did you have in Oregon in 1954, do you remember?

A. I would say five or six.

Q. Was Mr. Hoyt one of those? A. Yes.

Q. Now, in 1954—were you with the company in 1954? A. No.

Q. You had terminated before that time?

A. Yes.

Q. But before you quit Mr. Hoyt had been one of the inspectors in Portland under your supervision; is that right? A. That is right.

Q. Now, Mr. House, did you ever have occasion to discuss [71] with the Portland inspectors, including Mr. Hoyt, the matter of travel time and how they were to use it and plan it?

A. Very definitely. I don't know on how many occasions, but that was one of the problems that we were faced with.

Q. Would you explain to the Court what you mean by that? What instructions did you give?

A. That when they went to inspect a plant they were to stay there, barring unforeseen incidents coming up, until the inspection had been completed. In other words, the question or the problem came up

(Testimony of J. G. House.)

many times that the inspector would spend half a day driving to and from a plant where we would instruct him to stay overnight, and that it was cheaper and he would do a better job by staying at the plant until the inspection was complete rather than driving back and forth. That came up a number of times, in not only the Portland office but all the other offices.

Q. Was there any suggestion as to the number of miles away from the home base that they should try to plan that, or just how was that?

A. I don't recall that there was any set mileage. They were told to drive or not to drive. It was more or less left up to their discretion.

Q. But they were to plan so that they would get a plant finished rather than run back and forth to Portland? [72] A. That is right.

Mr. Williamson: I think that is all.

Cross-Examination

By Mr. Anderson:

Q. Now, Mr. House, during that period of time Mr. Hoyt did follow your directive, did he not?

A. So far as I know or recall; yes.

Mr. Anderson: That is all.

Mr. Williamson: That is all.

(Witness excused.) [73]

WESLEY L. BOGARDUS

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williamson:

Q. Where do you live, Mr. Bogardus?

A. Beaverton, Oregon.

Q. By whom are you employed?

A. General Insurance Company of America.

Q. In what capacity?

A. I am the state sales manager for the General.

Q. How long have you been so employed?

A. I have been so employed in the State of Oregon since November of 1953.

Q. Before that time what was your job?

A. I had a similar position in the State of Idaho.

Q. What people were under your supervision?

A. All of the employees in the State of Oregon.

Q. That would include the engineers?

A. Yes, sir.

Q. How many people all told would that include?

A. We have approximately 115 employees in the state.

Q. In 1954 how many engineers such as Mr. Hoyt did you have?

A. I believe we had six in the state. [74]

Q. Are you an engineer? A. No, sir.

Q. In March of 1954 was there any supervisory employee in Oregon between the engineers and your-

(Testimony of Wesley L. Bogardus.)

self? A. In the early part of 1954?

Q. Yes. A. No; there was not.

Q. Was that later changed? A. Yes, sir.

Q. When was it changed?

A. Later in the year. I don't recall the exact date, but it was in the fall of the year, as I recall.

Q. Of 1954? A. Of 1954.

Q. What change was made at that time?

A. From the engineering standpoint Mr. Brown was put in charge as supervising engineer in the system, the chief inspector in the state here.

Q. What was Mr. Brown? Who was he?

A. Prior to this time, Mr. Brown was an inspector engineer in the state.

Q. Was he on the same or a different level as far as authority is concerned than Mr. Hoyt?

A. He was on the same level with Mr. Hoyt.

Q. Until this change was made? [75]

A. Yes, sir.

Q. In the latter part of 1954? A. Yes, sir.

Q. Now, after the change was made how did his job differ from the other engineers?

A. After Mr. Brown took over if the inspectors had any problems which they felt was perhaps above their capacity, or they wanted further advice or help on, they would go to him rather going direct to our office in Seattle.

Q. Did you have trainees on occasion?

A. Yes.

Q. Did Mr. Brown have any particular job in relation to the trainees?

(Testimony of Wesley L. Bogardus.)

A. Yes, sir. He would work with the trainees developing them to senior employees.

Q. Did Mr. Brown during all of this time always retain an area or territory the same as the other inspectors? A. Yes, sir.

Q. Now insofar as you were concerned did you have direct dealings with these engineer inspectors?

A. I would if there was something particular that came up in their territory.

Q. Did they work separately or independently or under direct supervision, or tell the Court how they operated?

A. Each man controls his own territory. There is a certain [76] amount of objects and insurance risks that are assigned to him, and it is up to him to arrange his work in his territory so that he can get around to them within the required time, according to the State or to our own company regulations. He would pretty much run his own territory.

Q. Now were you his direct superior in Oregon at least up to the time that Mr. Brown was so appointed? A. Yes, sir.

Q. If Mr. Hoyt or any of these other inspectors made recommendations, particularly of a technical nature concerning machines, and so on, would you be advised of that fact?

A. If it were a problem in which an agency problem would arise—by “agency” I mean an agent representing our company, between the company and the insured—and it was felt that there was some particular problem there, then I would be. Other-

(Testimony of Wesley L. Bogardus.)

wise, it would be one which the engineer would take up with the home office or handle himself directly with the insured or the agent.

Q. Are you qualified to know anything about recommendations concerning engineering problems of a technical nature?

A. No, sir. I would have to depend on these men.

Q. Did you, in fact, depend on these engineers in that connection? A. Yes, sir.

Q. Now, Mr. Bogardus, did you on occasion have meetings of [77] a general policy nature which the engineers would be requested to attend?

A. Yes, sir.

Q. Will you just explain those meetings and what they were for.

A. During 1954 we had monthly sales meetings in which we would bring sales representatives and engineers, various men, in from all over the state and would talk to them about problems of the insurance business today, plus that of promoting more new business and servicing that that was on the books.

Q. Were the engineers included in that?

A. Yes, sir.

Q. Were they expected to assist in that wherever possible? A. Yes, sir.

Mr. Williamson: I think that is all.

(Testimony of Wesley L. Bogardus.)

Cross-Examination

By Mr. Anderson:

Q. Do you mean, Mr. Bogardus, that your inspectors were expected to go out and sell insurance?

A. Their first job, sir, was certainly to inspect the risks from the standpoint of safety, sure. However, if they had time, they were instructed to contact the agents with the possibility of developing more insurance.

Q. You didn't answer my question. I asked you whether the [78] inspectors were expected to go out and sell insurance?

A. No, sir. We don't operate that way in our company. We have to work through the agents.

Q. You have charge of the Oregon setup at the present time? A. Yes, sir.

Q. You have to report where? To the Seattle office? A. Yes, sir.

Q. And below you there is a chief inspector in Oregon, is there not? A. Yes, sir.

Q. And below that comes your ordinary inspectors, like Mr. Hoyt? A. Yes, sir.

Q. Did you have anything to do with assigning the territory for the inspectors?

A. Very little, sir. That would be left up principally to the chief inspector and his men.

Mr. Anderson: That is all.

(Testimony of Wesley L. Bogardus.)

Redirect Examination

By Mr. Williamson:

Q. By the chief inspector do you mean the man in Seattle?

A. No, I mean principally Mr. Brown here and in co-ordination with our Seattle office.

Q. Before Mr. Brown was made the supervisor how was the [79] territory assigned?

A. Well, in conjunction with the chief superintendent in Seattle the work load was divided up evenly amongst the men, and then they would develop their own territories and develop their own itineraries and the way in which they were to work in the territory.

Q. Do any of the company employees besides the agents actually sell insurance to the public?

A. We can accompany an agent and assist the agent in selling, but we as company employees cannot go direct to the public to solicit insurance.

Mr. Williamson: I think that is all. Thank you.

(Witness excused.) [80]

RACHAEL A. DeVOE

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williamson:

Q. Will you state your name, please?

A. Rachael DeVoe.

Q. Where do you live? A. Seattle.

Q. What is your position?

A. Administrative supervisor in the Boiler and Machinery Department.

Q. Of the General Casualty Company?

A. Right.

Q. How long have you held that position?

A. About nine or ten years I have worked in that department.

Q. How long have you worked for the General Insurance Company altogether?

A. Nearly fifteen years.

Q. Now, then, during the last nine years you have held the position that you now hold?

A. Yes.

Q. Just what are your duties in summary fashion, please?

A. Well, the administration of the office detail, the handling of policies, the personnel problems in respect to the [81] girls and the routine of the office, and I also sit in in an advisory way on overall personnel and our general service to the agents and to the public.

(Testimony of Rachael A. DeVoe.)

A. Entirely to the department.

Q. I see. Now, primarily is your work confined to this department, Boiler and Machinery?

Q. Do you have anything to do with, under your supervision, the figuring out of pay and the determining of overtime and things of that sort?

A. Yes, I do. People in the department who are in the overtime status group; that is, people who are not supervisory, administrative or inspectors, keep a timecard, and I collect those timecards monthly and turn in an overtime report to the payroll department. I don't calculate the amount of money, but I do turn in the amount of time.

Q. Prior to 1953, did you have trainees as well as inspectors? A. Yes, we had.

Q. What is a trainee?

A. It is primarily a man who is new to the insurance business, or new to our company, at least. Some of them are trainees for a short period while they become acquainted with our procedures. Others are trainees while they study for their National Board examination, which is given annually every —I think four times a year.

Q. In other words, they are training to be engineering [82] inspectors?

A. They are training for their National Board commission, yes.

Q. Prior to 1953 were those trainees kept on an overtime basis?

A. No. Let's see. 1953? No.

Q. All right. Now, was that changed later on?

(Testimony of Rachael A. DeVoe.)

A. Yes, they changed in 1953.

Q. Will you tell the Court the occasion for that change coming about?

A. Well, a representative of the Wage and Hour portion of the Government—I don't know exactly what you would say his job is, but he was a representative of the Wage and Hour group—called at the office and reviewed our records for both office people and inspectors and supervisors, and he reviewed all of our people and then came back later for a meeting and informed us that we should keep time records on trainees and that we should turn in their monthly work from these time records for the payment of overtime.

Q. Did you also have a discussion concerning the engineer inspectors?

A. Yes. It was the primary—it was his primary concern, was the inspectors, and particularly in the trainee group. He gave us instructions to keep time records on the trainee group for the reason that they didn't have territories [83] assigned to them. They were not independent. He said specifically if they made over \$325 a month and they were independent, or they organized their own time and took care of their own inspection territory, they would be out of the overtime category.

Q. Now, Mrs. DeVoe, at my request did you go through the hours in Defendant's Exhibit No. 2?

A. Yes.

Mr. Williamson: And I will hand you Exhibit

(Testimony of Rachael A. DeVoe.)

No. 9 for Identification, which I should offer in evidence. Do you have any objection?

Mr. Anderson: No.

(The group of documents referred to, entitled "B. & M. Inspector's Daily Report," was thereupon marked and received in evidence as Defendant's Exhibit 9.)

Mr. Williamson: Will you hand her Exhibit No. 2, please?

Q. First explain to the Court, please, the records that you hold in your hand.

A. The small forms are a record—

Q. That is Exhibit No. 9?

A. Yes. —are a record of inspection of each individual object for the purpose of compiling the information for the National Bureau of Casualty Underwriters for rating purposes.

Q. Is that information used for the determination of salary, [84] or anything of that sort?

A. No.

Q. As to the trainees, you have them keep time-cards? A. Regular timecards.

Q. All right. Now, then, what is Exhibit No. 2?

A. This primarily is the same thing. This is the time of inspecting each individual risk for the purpose of reporting to the National Bureau of Casualty Underwriters for rating purposes.

Q. Now why was there a change in that form?

A. Well, simply a clerical matter. This informa-

(Testimony of Rachael A. DeVoe.)

tion was taken into the office, compiled by the girls for an annual report to the Bureau.

Q. Exhibits No. 2 and No. 9, who prepared those?

A. Robert E. Hoyt.

Q. Those are the ones that he actually prepared? A. Yes, they are.

Q. Now was there a time gap between the change from the form, Exhibit No. 9, to Exhibit No. 2?

A. Yes, there is about three weeks missing in these.

Q. All right. Then other than the three-weeks period was there any other gap?

A. Only for vacation.

Q. At my request did you go through all the time records as indicated in those two exhibits and compare them with [85] Exhibit A attached to the complaint in this case?

A. Yes, I did. This is my comparison here.

Q. That was your comparison. Will you just tell the Court what you found as to the number of hours named in Exhibit A to the complaint and those in the records that you hold in your hand.

A. I don't have the total here for Exhibit A, but comparing each individual week we find no continuity between the two.

Q. What do you mean, you could find no continuity?

A. Well, in my records there would be two hours maybe appear and in his it would be maybe ten, and the next week there would be a difference. I couldn't come to the conclusion that he had used the

(Testimony of Rachael A. DeVoe.)

same records he had turned in to our company in making his Exhibit A.

Q. Nevertheless, did you go through the records that he had turned in? A. Yes.

Q. And add up the number of hours?

A. Yes.

Q. That is, that would have been over 40 hours a week? A. Yes, I did.

Q. According to his records? A. Yes.

Q. What did that amount to?

A. 248 and three-fourths hours. [86]

Q. That was based on what kind of a work week?

A. That is the same work week he had, which is Monday of every week through Sunday of every week.

Q. What is the work week that you actually employ in the company?

A. Our payroll in the personnel department uses the standard calendar week, Sunday through Saturday.

Q. Did you compile it according to his own records during that period of time?

A. Yes. There is only ten hours difference in the total period. There is ten hours less in the standard calendar week.

Q. Is there any way that you can check Exhibit 2 and Exhibit 9 to find out whether or not the inspections as shown there actually were made in the field by the inspectors?

A. Yes, I did that to the best of my ability.

Q. How would you do it?

(Testimony of Rachael A. DeVoe.)

A. The inspector keeps inspection slips or work slips in his possession while he is inspecting the individual objects, and when the policy is rewritten or canceled or the coverage on the objects are changed in any way we recall those slips from him and we keep them for the statute of limitations. And I went back over those old inspection forms to check out some time recorded here.

Q. Are those those yellow cards? [87]

A. Yes.

Mr. Williamson: I will offer Defendant's Exhibit 3 for Identification in evidence.

The Court: Admitted.

(The blank yellow forms referred to were thereupon marked and received in evidence as Defendant's Exhibit 3.)

Q. (By Mr. Williamson): I will hand you Exhibit No. 3, Mrs. DeVoe. Is that the record that you have reference to?

A. We keep the old ones in the office after they are recalled from the inspectors.

Q. How does the inspector use those cards, Exhibit 3?

A. Supposedly when he inspects an object he enters the date in the lower part of the card for each object inspected. If he inspects the entire plant, the date should be on the pink work slip.

Q. What?

A. On the pink one there should be the date some place on there.

(Testimony of Rachael A. DeVoe.)

Q. Now explain, if you will, please, who makes up those yellow cards initially?

A. The office writing the policy.

Q. That would be the local office? A. Yes.

Q. Then what happens to them? [88]

A. The original of the yellow slip is given to the inspector and a carbon copy is retained in the office.

Q. Now, when the inspector goes out and makes an inspection he makes a record of that inspection on the card?

A. On this card. Those are actually our only record of an inspection by individual objects.

Q. If the inspector does not have to make a report to the State of Oregon, for example, if the inspector has no recommendations to make—in other words, if what he inspects meets with his approval, does he make any record other than on that yellow card? A. No.

Q. Does he make any record that is submitted to the home office? A. No.

Q. That is a record, then, under those circumstances that he makes to himself showing when he made the inspection? A. Yes.

Q. All right. If he is making a State report, he would then make a note on the yellow card and also send in a report to the State?

A. Yes; that is right.

Q. Did you then check Exhibits 2 and 9 as against your yellow cards?

A. Yes; I spot-checked them. I think I did

(Testimony of Rachael A. DeVoe.)
around a hundred [89] checks; I checked 100 cases.

Q. Would you tell the Court the result of that check?

A. Well, I would say in—well, actually, in 53 per cent of the cases there was no record on the yellow card. Then to check further on it I personally called at the State of Washington Department of Labor and checked their records, and in many cases I was unable to find a record of inspection in the State office. Of course, they would only have a record if it were an internal inspection of a boiler or a tank.

Q. Could you tell from Exhibits 2 and 9 whether it would be an internal inspection or not?

A. No; not on 2 or 9; no. On No. 3 supposedly an internal inspection should have been underlined. But in most cases there was no date on these cards.

Mr. Williamson: Now, I will hand you what has been marked Exhibits 4, 5 and 6, and I will offer those exhibits in evidence.

The Court: Admitted.

(Three blank boiler inspection forms were thereupon received in evidence as Defendant's Exhibits 4, 5 and 6, respectively.)

Q. (By Mr. Williamson): By referring to the exhibit number at the top of each page, would you just briefly explain what [90] each of those exhibits are?

(Testimony of Rachael A. DeVoe.)

A. Well, the first form, the survey form, is issued by the office to the inspector to get him to give us a list of the objects for rating purposes and his remarks about any differences in underwriting conditions that he can note; not only differences but also any recommendations or rating information. The next one is the order for the first inspection which is given to the inspector as soon as the risk is bound. He again lists the objects that are insured and makes comments or recommendations on the back of it, both of an underwriting and safety nature. The next report is a form—it is our own form. However, they—it is an exact copy, the front of it, of the American Society of Mechanical Engineers report of inspection for code boilers or tanks. The back of it is a general inspection form, one of our own forms, and it is a narrative report of the conditions found on inspection. The fourth one is the Boiler Data Report. It is a form that is used in some states and not in others. It is information as to the actual construction of the boiler. It is made out usually at the first inspection in the states that require it. However, some states do not require it.

Q. Do the inspectors such as Mr. Hoyt make out all those reports? A. Yes.

Q. Where is the initial report sent? [91]

A. The initial report? By that you mean the survey form?

Q. The first form that is made on a new risk

A. They are returned to the office issuing them

(Testimony of Rachael A. DeVoe.)

and the office would be the office receiving the order from the agent for the policy.

Q. Who would get a copy, if anyone?

A. One would be retained in the office and the original would go to the inspector.

Q. The original would go to the inspector?

A. Yes.

Q. All right. Now, then, on the report forms, who gets copies of those?

A. You mean after the inspector makes out the inspection report who gets copies?

Q. No. In other words, after a new risk is taken on and you make your initial inspection, just your ordinary, routine inspection.

A. Well, the inspector, if it is a State inspection, sends a copy to the State. If he has any recommendations, he also sends a copy to his local office, and the inspection report later is typed. There is an extra carbon made—a couple of copies go to the insured, a copy to the agent, a copy to the inspector and a copy to be retained in the office files.

Q. In other words, if a recommendation is made on the inspector's report a copy of that is then sent to the assured? [92] A. Yes.

Q. Now are there changes made in those recommendations before they are sent out?

A. Only editorial changes.

Q. What do you mean by editorial changes?

A. Mistakes in grammar and spelling. We do, however, have a book of recommended wording for inspectors.

(Testimony of Rachael A. DeVoe.)

Q. To cover the same situations?

A. Yes. An inspector actually, instead of writing out the full recommendation, can give it a number. All of the inspectors have a copy of that book and also the typists who type it later.

Q. Then as far as the recommendation that the inspector makes is concerned, is there any substantial change by the time the assured receives a copy of it? A. No.

Q. Did you in checking these records, Mrs. DeVoe, check anything concerning the miles driven by Mr. Boyd?

A. Yes, I did. I checked the records of the inspector's time turned in as against his expense accounts in an effort to see whether or not there was excess driving back and forth between the Weyerhaeuser plant in Longview and his home. Nearly every expense account has at least two or three evening meals charged to the company because of driving home late in the evening. [93]

Q. Would those be on consecutive days?

A. Sometimes.

Mr. Williamson: I think that is all.

Cross-Examination

By Mr. Anderson:

Q. Mrs. DeVoe, you said you had some conversation with some public officer about whether or not these inspectors were subject to the Wage and Hour Act? A. Yes.

(Testimony of Rachael A. DeVoe.)

Q. Who was that? A. Mr. Henderson.

Q. With officers in Seattle?

A. I don't know where his office is.

Q. And he told you that these inspectors were not under the Fair Labor Standards Act? Is that right? A. Yes.

Q. That is what you acted upon? A. Yes.

Q. Now, there was a time when Mr. Hoyt was required to put in all of his time or report his full time to your office, wasn't there, travel time and all?

A. His time for the purpose of reporting to the National Bureau of Casualty Underwriters, you mean?

Q. There is an exhibit upon the Clerk's desk—I think it [94] is No. 1. A. Yes.

Q. You have the original of that in your possession, don't you?

A. I would like to check the dates before I say.

Q. Yes.

A. Yes, we have copies of these originals.

Q. Do you have them here?

A. Yes. Not all of these. I think we only have 1954. I see there is '53 in here.

Q. I see. How late does that run?

A. June 11th, 1954.

Q. June 11th, 1954. Up to that time Mr. Hoyt was required to report to your office the full time worked every day, wasn't he?

A. He was required to report to us the inspections he made during that day. He was not re-

(Testimony of Rachael A. DeVoe.)

quired to make an eight-hour report, an eight-hour-working-day report.

Q. In any event, you did receive daily a daily record of the time that he worked? A. Yes.

Q. Have you checked that period of time as against Exhibit A to the complaint, and doesn't it conform?

A. Of course, this is only part of the period.

Q. Yes. I am speaking of that particular part of the period. [95] It conforms, doesn't it?

A. I can't say for sure unless I look back against my records. Generally for the whole period he is claiming it doesn't check out exactly.

Q. As a matter of fact, however, after June you instructed him not to report any time except the time that he was in the actual inspection of objects? A. I believe that is correct.

Q. Then you kept no record of his time at all, did you, in the Seattle office?

A. Yes, we kept a record of his time. This is from an annual report, made up once a year.

Q. You do have a record of the actual time worked up to June of 1954, don't you?

A. Yes, I would say so.

Q. And after June, 1954, you instructed him not to send up that record any more, didn't you?

A. We gave him a new form to complete.

Q. And that didn't ask for his travel time to be reported? A. That is right.

Q. So you have no record of that at all?

A. Only what he turned in.

(Testimony of Rachael A. DeVoe.)

Q. Yes. Now, about those yellow forms, assuming that Mr. Hoyt was called by Weyerhaeuser at Kelso or Longview just to check up on something that had been done, an informal call, [96] he was expected to go out there, wasn't he?

A. If he was called by Long-Bell, I would say he was, yes.

Q. And if he was called out there just to check on something casually, would he make a report on one of those yellow sheets?

A. Well, I think he would.

Q. Do you know whether he did or not?

A. I wouldn't know. No, I don't know.

Mr. Anderson: I have no further questions.

Mr. Williamson: That is all.

(Witness excused.) [97]

STERLING McINTYRE

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williamson:

Q. Where do you live, Mr. McIntyre?

A. I live on Vashon Island, Washington.

Q. What is your position with the General Casualty Company?

A. I am Manager of the Boiler and Machinery

(Testimony of Sterling McIntyre.)

Department wherever we write business in the United States.

Q. How long have you held that position?

A. I have held that position since April 1st, 1953.

Q. Are you personally trained in engineering work?

A. No, sir. I am not personally trained in engineering work.

Q. Is your job primarily administrative in character?

A. My job is primarily administrative in character.

Q. Does your job encompass all of the work in that particular field? In other words, do you have all of the agents, supervisors, inspectors, clerks and so on all under your department?

A. Yes, I have the responsibility for the whole operation.

Q. Now on whom does your department depend for its technical knowledge and information?

A. From the resident inspectors in the [98] territory.

Q. Would that include such people as Mr. Hoyt?

A. Yes, it would.

Q. Do you employ any independent engineers or technicians or anyone outside the company to consult with on these problems?

A. No, we don't, unless under unusual circumstances—if our people felt that they didn't have the

(Testimony of Sterling McIntyre.)

information, we might call outside advice, but that is only on very rare occasions.

Q. As a matter of routine, in obtaining information as to the risks that you are handling, the repairs that are to be made, and so on, you depend on these engineers in your department?

A. Yes, we do.

Q. Are these engineer inspectors that you employ working under direct supervision, or how do they work?

A. The bulk of our inspectors do not operate under direct supervision. Most of them are independent of direct supervision. Now, employees would be under direct supervision, but older, established people, no.

Q. How do they work?

A. The inspector in the territory is responsible for all the boiler and machinery accounts written by the company. It is his responsibility to organize his own territory and to plan his work so that he can satisfy the company that the [99] risks they write are safe or that they are maintained in safe operating condition. And they also discuss problems of the business with the management of our insureds.

Q. Do these men make recommendations to the company of all kinds? A. Yes, they do.

Q. Would you just tell the court what kind of recommendations these men customarily make?

A. The recommendations made are largely ones pertaining to safety.

(Testimony of Sterling McIntyre.)

Q. Are they technical in nature?

A. Largely, yes. They may also include minor recommendations which would improve the general operation of the insured plant if he felt it was to the insured's interest.

Q. Do they ever make any underwriting recommendations? A. Yes, they do.

Q. Such as what?

A. Well, we recently had a case where the losses were continuing to be excessive, and the inspector made a recommendation that a \$500 deductible be applied to the risk and, in addition to that, that there should be a longer waiting period before the loss-of-income coverage would apply, and, third, that they have at least another engineer on the premises during the night hours, and that if we couldn't get compliance with that then we should retire from the risk. [100] And we did just that.

Q. Do the inspectors make recommendations concerning loss prevention and things of that sort?

A. Yes, they do. That is their main responsibility.

Q. Would that encompass not only changes in the mechanical structure of the machine or repair to the machine, and so on, but as well to personnel training?

A. We are as much concerned with the caliber of the employee and the training of them in the machine plant as we are the machine. A perfect machine can fail because of improper operation by the operator himself.

(Testimony of Sterling McIntyre.)

Q. Are the inspectors supposed to size up or calculate the type of personnel that is employed in the insured plant? A. Definitely, yes.

Q. Do they ever make any recommendations concerning agency problems and policy problems of the company?

A. By agency problems you mean the insurance agent?

Q. Yes.

A. And not an employee of the company?

Q. Yes.

A. Yes, they do, because they live in the area where the agent resides, and they are as concerned with the agent's attitude toward the company as anyone else because it can affect the company's business.

Q. Do those inspectors consult with the agent on occasion? [101]

A. The inspectors do consult with the agent and are so instructed. When they go into a territory and they find adverse conditions existing in a plant, they are asked to advise the local agent and solicit his aid in getting these things carried out.

Q. Now, Mr. McIntyre, in the general run of things are the recommendations that these men make handled by the home office, or how are they handled?

A. The recommendations by the inspector during the period in question, for about the first nine months of the period we are discussing——

(Testimony of Sterling McIntyre.)

Q. You mean from about March of 1954?

A. From March 1st, 1954, until about December, 1954, the recommendations were made by the inspector himself and would come into the office to be typed out and edited as far as grammatical errors were concerned and sent out to the insured, to the agent, and a copy to the inspector.

Q. Would there be any follow-up from the home office or from any other inspector?

A. The home office made no follow-up. We expected the inspector to follow up himself individual recommendations which he felt were serious enough to warrant it.

Q. Then the inspector would deal directly with the insured in connection with those recommendations?

A. The inspector deals directly with the insured in the [102] majority of, if not all, the recommendations that are made, yes.

Q. Then if there is a conflict between the insured and the inspector, what happens then?

A. If there is a conflict between the insured and the inspectors, the inspector reports that to the office on the risk, and the salesman who is handling the account will discuss it with the agent and ask him if he can prevail upon the insured to get these recommendations carried out. Oftentimes the inspector, the agent, the salesman and the insured discuss it. If we feel it is serious enough, we

(Testimony of Sterling McIntyre.)

may retire from the risk or we may modify the coverage.

Q. Mr. McIntyre, did you ever have occasion to discuss with the inspectors, including Mr. Hoyt, during the time in question from March of 1954 until May of 1955 concerning travel time?

A. Yes. Upon arrival in April of 1953, being a new manager of the department, most people wanted to know what my policies would be, and we established those on initial meetings and periodically through the three years that I have been with the company, or three and a half years. I talked with these groups of people about operating a territory in the most efficient manner, and definitely, from reviewing the expense accounts, to reduce travel back and forth and to stay in a territory or plan their itinerary so they were [103] gone three or four or five days, if need be, and then return home, and not commute back and forth where little productive work is done.

Q. After you took over, did you have occasion to review Mr. Hoyt's reports in connection with that?

A. Yes, I did review Mr. Hoyt's reports and saw that he was not complying with the intent of the directive at these general meetings which we held, and thereafter I did have correspondence with the Portland office regarding it.

Q. I will hand you what has been marked Exhibit 8 for Identification. What is that, Mr. McIntyre?

(Testimony of Sterling McIntyre.)

A. This is a letter from me dated December 23rd, 1954, to Mr. Richard Stevick of the Portland office, who was the administrative manager under Mr. Bogardus at that time.

Q. That was concerning what?

A. This was concerning Robert E. Hoyt.

Q. On what subject?

A. Well, the subject was in regard to excess travel time for Mr. Hoyt.

Mr. Williamson: I will offer that exhibit in evidence.

The Court: Admitted.

(Copy of letter dated December 23, 1954, was received in evidence as Defendant's Exhibit 8.)

Q. (By Mr. Williamson): What was the reason for your [104] objecting to Mr. Hoyt's accounts in that respect, Mr. McIntyre?

A. The time of an inspector in the plant is the most valuable time that there is, and if the man spends half a day driving to and from the premises there is very little productive time devoted to that most productive work. Therefore, we would rather pay the expense of room and board and have the man live in a territory until the work is done than to have him commuting back and forth to the job.

Mr. Williamson: I think that is all.

(Testimony of Sterling McIntyre.)

Cross-Examination

By Mr. Anderson:

Q. Your office is in Seattle? A. Yes, it is.

Q. You are chief of the Seattle office?

A. Not the chief. I am manager of the department.

Q. What is your relationship to the chief inspector in Oregon?

A. We have no chief inspector in Oregon. There is a supervising inspector.

Q. I see. But you are over him, I take it?

A. Yes, I am. Not directly over the man from a professional standpoint in the department, but administratively. Mr. Bogardus [105] has the direct responsibility for him.

Q. He is subject to your orders, is he not?

A. Not exclusively. My orders usually are executed through the administrative office of Bogardus. From a technical standpoint, he would give instructions pertaining to the technical aspect of his work.

Q. During 1954 did you at any time give Mr. Hoyt a direct order that he should not use his car from here to Kelso? A. No, I didn't.

Q. In fact, he never received such a direct order from any officer of the company, did he?

A. Personally I didn't talk with Mr. Hoyt. My correspondence was with the Portland management, who I am sure did so.

(Testimony of Sterling McIntyre.)

Q. You are sure that they gave him a direct order not to use his car between here and Longview?

A. I couldn't vouch for the method in which that was conveyed, no.

Q. In fact, you don't know anything about it, do you? A. Pardon?

Q. You don't know anything about it, do you?

A. I don't know what conversation transpired between Mr. Hoyt and the Portland management, no.

Q. What I am trying to say is that you don't have any information with relation to any direct order given to Mr. Hoyt regarding the use of his car or staying over in [106] Longview or elsewhere?

A. I have talked to Mr. Hoyt in a group of inspectors about twice a year, with very definite instructions not to commute to the job. Now, I didn't mention specifically Longview, no.

Q. I see. Were your directives carried out?

A. To the best of my knowledge, the spirit of it was carried out, but it appeared in this particular case that it ultimately was not.

Q. Did you then have occasion to discharge Mr. Hoyt?

A. I didn't discharge Mr. Hoyt, although in conversation with Mr. Bogardus, the Portland manager, it was agreed that that would be necessary, yes.

Q. You directed his discharge?

(Testimony of Sterling McIntyre.)

A. I wouldn't say that I directed his discharge. Mr. Bogardus and I don't operate on that basis.

Q. You concurred, then, with Mr. Bogardus?

A. Yes, I did concur with Mr. Bogardus on that point.

Q. And Mr. Bogardus consulted you about it and asked your opinion about it?

A. Yes, he did.

Q. And that came about as a result of this thought you had about him using his car more than he should?

A. That was only part of it. There are other factors involved here which brought this about which didn't have a [107] direct bearing on the hours in question.

Q. I see. Now you have been in this insurance business a long time, have you not?

A. Yes, I have.

Q. Boiler inspection and machine inspection?

A. I have never done any boiler or machinery inspection work.

Q. I am speaking about companies. You are familiar with the operation of companies carrying these risks?

A. I have been in this business since 1939; yes.

Q. Have you been employed by other insurers having similar risks? A. Yes, I have.

Q. What other companies?

A. I was employed by the Hartford Steam Boiler Inspection and Insurance Company.

Q. In what state?

(Testimony of Sterling McIntyre.)

A. Originally in 1939 in Hartford, Connecticut, as assistant to the superintendent of rate table coding.

Q. Did you ever work for Hartford Insurance Company? A. Pardon?

Q. Were you ever employed by Hartford Insurance Company?

A. This is the Hartford Steam Boiler Inspection and Insurance Company to which I have reference.

Q. I am not sure I understand you. I am asking were you [108] ever employed by Hartford Insurance Company.

A. Well, the term "Hartford" applies to quite a number of different insurance companies. I was employed by a firm known as the Hartford Steam Boiler Inspection and Insurance Company in Hartford and in San Francisco. In San Francisco, if I may just elaborate a little bit, I was a salesman in San Francisco promoting this line of insurance for seven years.

Q. You are generally familiar, then, with procedures throughout the states, are you not?

A. Yes.

Q. And they are generally uniform, aren't they? The duties of an inspector in Oregon under your setup are about the same as they would be in other states?

A. No, they do vary a little bit from state to state. State laws do vary, and in some states there are no laws.

Q. I am speaking now of the general duties of

(Testimony of Sterling McIntyre.)
an inspector in relationship to the company and the job.

A. Are you talking about our company alone or all companies?

Q. I am speaking of companies generally in the same field.

A. Companies vary from one to another. I can't vouch that they are all alike, no. I would say they are not.

Mr. Anderson: That is all. [109]

Redirect Examination

By Mr. Williamson:

Q. Mr. McIntyre, can you state whether or not there is any difference between the way the inspectors were handled in the Hartford Company and the way they were handled in the General Casualty?

A. Yes, I can. Having worked for some thirteen years with the Hartford and about three with this company, I think I can speak as to the comparative jobs that they do handle.

Q. Will you explain that, please.

A. The Hartford Steam Boiler Inspection and Insurance Company deals with no other line of insurance. All that they sell is boiler and machinery insurance. The General Casualty Company is a multi-line insurance company. Perhaps only 1 per cent of our business is boiler and machinery and the balance is fire and casualty and allied lines. So

(Testimony of Sterling McIntyre.)

that the type of work that an inspector does with our company is considerably different from that which he did with the Hartford Steam Boiler and most other companies. We expect our men to be able to handle not only boiler and machinery inspections, but elevator inspectors and other casualty inspections and sales work to a limited degree on those minor or small types of accounts such as can be easily rated other than your big industrial accounts which call for a specialist.

Q. Are the inspectors in Hartford under more or less [110] supervision and direction than the inspectors in your department?

A. The inspectors under the Hartford Steam Boiler are much more limited in their responsibility and are much more closely supervised. Everything is put on a very special form. There is a form for every class of equipment insured. Our men evaluate risks themselves and write in their report on the over-all risk and its desirability.

Mr. Williamson: I think that is all. Thank you.

Recross-Examination

By Mr. Anderson:

Q. By the way, I take it you are very familiar with the Hartford Insurance Company inspection program? A. Yes, I am.

Q. Do you know that the hours of employment per week with the Hartford are expected to fluctuate and run anywhere from 40 to 60 hours?

(Testimony of Sterling McIntyre.)

A. Yes, I am.

Q. Is there any difference between that and your Oregon setup? A. Yes, there is.

Q. What is the difference?

A. Well, the inspectors with our company are not required to spend hours and hours writing out reams of detailed reports. [111] We have eliminated about all of this red tape, so that the man can work a 40-hour week and get his report in in a summary manner, without having to fill out this multiplicity of forms, which was such a bearcat to deal with in Hartford.

Q. You know, as a matter of fact, that Hartford assigns about 1,200 customers to each inspector?

A. No, they don't.

Q. You don't remember that?

A. No, they don't.

Q. How many?

A. They are assigned on the basis of the number of insured objects. There may be one plant where 1,200 objects are insured, but not 1,200 customers, no.

Q. How many objects generally does an Oregon man have to inspect?

A. I think that is something that is almost impossible to establish on an average rate, because the type and number of objects—you can assign to one man 500 objects and to another man 2,000 objects, and the man with 500 could have more work to do than the man with 2,000 because of the nature of

(Testimony of Sterling McIntyre.)

the inspection. If you take a high-pressure water-type boiler, a man could spend a week inspecting, as compared with another plant with 500 wheels in some line-shaft arrangement in a factory, where he could run down in five minutes and look at each wheel. That is not a true criterion of the [112] work involved.

Q. Isn't it a fact that Mr. Hoyt had about 1,500 accounts to service?

A. He never had 1,500 accounts to service, no.

Q. How many did he have?

A. That would have to be verified. I honestly don't know how many accounts he had. He could have had 1,500 objects to inspect.

Q. Then you don't know what the relationship or the difference is between the work of a Hartford inspector in the field and one of your own inspectors? A. Yes, I do.

Q. Hartford has a chief inspector in each area under which the other inspectors are employed; isn't that true? A. Yes, it has.

Q. The same as in this state, isn't it?

A. We have no chief inspector in this state.

Q. You mean you have never had a chief inspector in this state? A. No, we haven't.

Q. Do you have a chief inspector in Seattle?

A. We have had. We didn't have during the bulk of the time that Mr. Hoyt is questioning his wages.

Q. When you do have such a chief inspector, the other inspectors are subject to his directives? [113]

A. Yes.

(Testimony of Sterling McIntyre.)

Q. The objects which these inspectors for Hartford inspect are such things as steam boilers, pressure vessels, and machinery of various types?

A. Yes.

Q. Your Oregon inspector has the same problem, does he not? A. That plus much more.

Q. Well, machinery of various types includes quite a lot of territory, doesn't it?

A. Not necessarily. A man might have a territory right here in Portland and never go out of it.

Q. I am speaking now of the term "various types of machinery." That is a rather embracing subject, isn't it?

A. The term "machinery" is rather limited when you consider the type of equipment that we insure. We don't insure all kinds of machinery. There are fairly specific types and kinds that we insure.

Q. Now, an inspector for Hartford and for your company, too, are charged with determining in the first instance the suitability of the objects from the standpoint of safety and the suitability for continued operation; is that not true? A. Yes, they are.

Q. Is there any distinction there between your Hartford inspector and your inspectors? [114]

A. In the way we do it I think there is, yes.

Q. What difference?

A. The Hartford inspector has a standardized

(Testimony of Sterling McIntyre.)

report. He doesn't go along and evaluate it from the standpoint of an independent engineer the way our people do. He has a stock form which says boiler inspected for thus, thus and so. There are copies of these forms which outline in great detail exactly what he must report. We don't require our people to do that.

Q. Isn't it a fact that you provide your inspector with books showing details on how the inspection should be made and what to report?

A. No, we don't.

Q. You don't provide any such material to your inspectors at all?

A. We provide reference books which are put out by the National Bureau as to what the State and National safety requirements are. We don't put out a textbook of instructions to the inspectors as to how they shall inspect anything.

Q. Do you furnish forms for your inspectors upon which you expect them to report to the branch office and to your main office?

A. A limited number; yes.

Q. And does your inspector spend as much as 20 per cent [115] of the time in inspecting these objects?

A. I can't say an inspector should spend 20 per cent of his time inspecting objects.

Mr. Williamson: Your Honor, what do you mean by inspecting objects?

Mr. Anderson: How much time is spent in this

(Testimony of Sterling McIntyre.)

inspection work and how much time is spent in clerical work or driving, generally speaking?

A. Well, the man's job is inspection work. Part of his time is spent in evaluating risks.

Q. In other words, more than 20 per cent of his time is spent in the actual inspection of physical objects? Is that right or not?

A. I wouldn't say that you could exactly put a percentage on the amount of time actually spent in the physical examination of objects. A lot of time goes into determining whether or not they have a sound maintenance program, what the operator knows or what he doesn't know, and waiting for the boiler to be opened. When you ask me to give the amount of actual inspection time, I think you would have to be definite. I can't vouch for the fact that they spend 20 per cent of their time. I don't know.

Q. Do you think he spend more than 80 per cent of his time on clerical work?

A. No, I don't. Neither do I think that necessarily more [116] than 20 per cent of his time is spent in the physical examination of machines. The man behind a machine, travel time, reports, as well as the over-all picture must be taken into consideration.

Q. Isn't it a fact that your company has issued a directive to all your inspectors that they must not suspend a risk; that they must not condemn a boiler on the spot?

A. That is right. That is serious business.

Q. Yes.

(Testimony of Sterling McIntyre.)

A. That is, if you want to suspend insurance.

Q. You are apt to lose a customer, aren't you?

A. You are liable to lose a customer.

Q. So you have directed your inspectors to refrain from doing anything of the kind? You have directed that they must not suspend an object or condemn a boiler, as it were?

A. That is right. Wait a minute. Now you went on a point further there and said we must not allow our inspector to condemn a boiler. They frequently do condemn boilers, but they usually—if they are going to go that far, we feel we would like to discuss it. Not that we are going counter to the inspector, but we would like to know before the thing is kicked clear out.

Q. But the actual suspension is accomplished from your head office by your chief inspector, isn't it?

A. In the three years I have been here we have suspended [117] insurance three times at the most. That is a rare case, and I think has little or no bearing on it.

Q. Your chief inspector did that, made that order? A. He did not; no, sir.

Q. Who made the order?

A. In the case in question there was no suspension issued. If I may clarify the point for you, on the Warm Springs Lumber Company case, which Mr. Hoyt has cited, it was stated by the inspector that a particular thing was not desirable, and he made recommendations for improvement. The in-

(Testimony of Sterling McIntyre.)

sured said they considered it safe. I wrote a letter to the insurance agent asking that we be retired from the risk or that this particular machine be endorsed off the policy. We gave him ten days to do that. Ultimately the insured was satisfied that it was so, and eventually went down after this thing had been endorsed off to find out what the trouble was. But there was no suspension issued.

Q. What I am asking you is this: Isn't it a fact that you do not permit your inspectors to make any on-the-spot suspensions or terminations of equipment?

A. That is right.

Q. Now, most of your inspectors are recruited from the field of operating engineers and marine engineers, aren't they?

A. Many of them, yes. [118]

Q. How many inspectors do you have working under the supervision of the Seattle office?

A. Pardon me. By the Seattle office you mean the home office?

Q. Yes. A. The home office employees?

Q. Yes. A. There are about 25 inspectors.

Q. How many of those men have a college degree in engineering? A. None of them.

Q. I take it that when you hire these inspectors you give them a short training course of a week or two in operating instructions?

A. It depends upon the qualifications of the inspector when we hire him. If the inspector, as in the case of Mr. Hoyt, had been a previous employee of another company and has a National Board ticket,

(Testimony of Sterling McIntyre.)

very little training is required other than perhaps two or three weeks of training as to our company procedures as contrasted to his former employer. If the man comes to us with no previous training, doesn't have a ticket, then it may take three months to a year before we think that man is capable of accepting a territory, or three months before he is qualified to take the examination. [119]

Mr. Anderson: That is all.

Mr. Williamson: That is all.

(Witness excused.)

CHARLES F. BROWN

was produced as a witness in behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williamson:

Q. Mr. Brown, where are you employed by the General Casualty Company?

A. Portland, Oregon.

Q. What is your job?

A. Supervising inspector.

Q. How long have you held that job?

A. Oh, since December, 1954.

Q. Before that time what did you do?

A. Inspected.

Q. You were an inspector before that?

A. Yes.

(Testimony of Charles F. Brown.)

Q. For how long have you worked for the General altogether as an inspector? [120]

A. About fifteen years.

Q. Up until December of 1954, you were classified as an inspector? A. Yes.

Q. Did you do the same kind of work that Mr. Hoyt did? A. Exactly.

Q. Was Mr. Hoyt under you before December, 1954? A. No.

Q. Were you on an equal basis?

A. We were on a par.

Q. Who was your immediate superior in Portland? A. Mr. Bogardus.

Q. Do the inspectors work under direct supervision, or how do they work?

A. Well, they are more or less on their own. They have to be on their own. They can't call for advice every time they look at a boiler.

Q. Do you have your own territory now?

A. Yes, sir.

Q. Do you plan your own itinerary?

A. Yes, sir.

Q. And make your own reports and recommendations? A. Yes.

Mr. Williamson: I think that is all. [121]

Cross-Examination

By Mr. Anderson:

Q. You make recommendations to whom, Mr. Brown? A. To the insured.

Q. Do you also make recommendations to your

(Testimony of Charles F. Brown.)
company? A. Yes, sir.

Q. You are supervising engineer now?

A. Yes, sir.

Q. As a boiler inspector what particular literature does your company supply you with by way of technical guide books or instructions?

A. We don't have any guide books now. We used to have one years ago.

Q. You don't have any at all now?

A. No, sir.

Q. Do you know whether any of the other inspectors are provided with these guide books?

A. No. If you have any textbooks you buy them on your own.

Mr. Anderson: That is all.

Mr. Williamson: That is all.

(Witness excused.)

Mr. Williamson: The defendant rests, your Honor. [122]

ROBERT E. HOYT

the Plaintiff herein, was recalled as a witness in his own behalf, in Rebuttal, and was further examined and testified as follows:

Direct Examination

By Mr. Anderson:

Q. Mr. Hoyt, while you were employed as an inspector by the General Insurance Company were you provided with any particular printed rules or 'guides? A. Yes, sir.

(Testimony of Robert E. Hoyt.)

Q. Tell the Court what the company provided you with of that character?

A. We had a bound book called "Safety Appliances" about two inches thick, with different inspection procedures on every kind of equipment and things that we were liable to run into.

Q. Was that book published by the General Insurance Company?

A. Yes. It was in loose-leaf form, and we were to add to that every now and again when there would be a different policy or procedure come out from the chief inspector.

Q. What was the nature of those instructions?

A. Well, it would show you what to look for on different objects, where they were most likely to fail, and recommended repairs, and so forth, to that object. The name of that book was "Safety Valve," of which that Exhibit No. 8 there, I believe, is taken from it. [123]

Q. One other thing: Mrs. DeVoe spoke of some yellow forms. What was the function of those forms?

A. I believe that was those work cards?

Q. Yes.

A. Well, that was primarily a record of your objects that you would have in the various plants and your boilers and machinery and equipment, and so forth.

Q. Did that cover all the inspection trips you made?

A. Oh, no. Absolutely not. For instance, in the

(Testimony of Robert E. Hoyt.)

State of Washington they only required a report every two years on certain objects, heating boilers and tanks, so consequently we only sent into the Bureau of Labor at Washington a report once in two years.

Q. On those trips you had no use for these yellow cards?

A. Oh, yes. We used them to count our objects. For instance, in the Weyerhaeuser plant there was 750 objects insured there. If I took one particular mill that had maybe 40 or 50 objects in it, I would just note a date on there and sometimes I wouldn't even do that, because the truth of the matter is I would no sooner get home than they would call me again the next day. I had other business in different parts of the State of Oregon, and that was a continuous job. You was never through with that job. Those cards were issued once for the period of a three-year policy, and if I remember right I think there is only places for 12 marks [124] on there, 12 dates. So you had to be very careful marking them or you would be out of space on them.

Q. Now what was the nature of this controversy about your travel time or whether you should stay over at some points of inspection? Tell the Court about that.

A. Well, that was a point of argument. As a general rule, where you didn't have instructions, they told you when you were 50 or 60 miles from your home base to come home. As a matter of fact, I had those specific instructions here for the State of Ore-

(Testimony of Robert E. Hoyt.)

gon, that they will not pay my bills if I am less than 60 miles from home. Well, Longview, Washington, is, I think, 45 or 46 miles, something like that, from Portland, and I had been coming home every night. Once every year it is required to inspect our logging camps. Now they have over there in Cowlitz County in logging equipment the whole west slope of Mt. St. Helens. And I think I was working that territory for about ten days or two weeks there. When I would hit the highway there was no place to buy a room or stay overnight or a meal or anything else. Usually they will feed you in a logging camp at lunch hour, but when I would hit the main highway coming down off of there I would around Kalama, Washington, some place, which I believe is a matter of 30 miles from home, and I could see no sense, rhyme or reason to go back to Longview and buy a hotel room. There was some days there when I would drive around that [125] mountain and I would run 150 or 200 miles driving time, but it was necessary to get them their operating permits from the State of Washington.

Mr. Anderson: Your witness.

Cross-Examination

By Mr. Williamson:

Q. Those yellow cards, Mr. Hoyt, that you just spoke of, what is the purpose of those?

A. That shows the objects that are insured.

Q. What are the blanks in there with dates on them? What are they for?

(Testimony of Robert E. Hoyt.)

A. That is to note your inspections.

Mr. Williamson: That is all.

(Witness excused.)

Mr. Anderson: We have nothing further, your Honor.

Mr. Williamson: The defendant rests, your Honor.

(Thereupon the matter was argued to the Court by counsel and the Court took the cause under advisement.) [126]

REPORTER'S CERTIFICATE

I, John S. Beckwith, an Official Reporter of the above-entitled Court, do hereby certify that on October 2, 1956, I reported in shorthand the proceedings occurring in the above-entitled matter, that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of Pages 1 to 126, both inclusive, constitutes a full, true and accurate transcript of said proceedings so reported by me in shorthand on said date, as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 8th day of December, 1956.

/s/ JOHN S. BECKWITH,
Official Reporter.

[Endorsed]: Filed December 12, 1956.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint, Amended Answer, Pretrial Order, Findings of Fact and Conclusions of Law, Judgment, Notice of Appeal, Cost Bond, Statement of Points, Designation by Appellant of What to Be Included in Record, Order to Transmit Exhibits, and Transcript of Docket Entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8496, in which Robert Emmett Hoyt is the plaintiff and appellant and General Insurance Company of America, a corporation, is the defendant and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith the reporter's transcript of proceedings filed in this office in this cause. Plaintiff's exhibits 1, 2, 3, 5, 6, 7, 8 and 9—and Defendant's exhibits 2, 3, 4, 5, 6, 7, 8 and 9 are being forwarded under separate cover.

I further certify that the cost of filing the Notice of Appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 20th day of December, 1956.

[Seal]

R. DeMOTT,
Clerk;

By /s/ THORA LUND,
Deputy.

[Endorsed]: No. 15400. United States Court of Appeals for the Ninth Circuit. Robert Emmett Hoyt, Appellant, vs. General Insurance Company of America, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: December 22, 1956.

Docketed: December 31, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals,
Ninth Circuit

15400

ROBERT EMMETT HOYT,

Appellant,

vs.

GENERAL INSURANCE COMPANY OF
AMERICA, a Corporation,

Appellee.

STATEMENT OF POINTS

The points to be relied on by appellant are as follows:

(a) That plaintiff at the time of his employment with defendant was subject to and entitled to the benefits of the Fair Labor Standards Act of 1938, 29 U.S.C.A., Sections 201 to 219;

(b) That the court's findings of fact are not supported by the evidence, but are contrary to the evidence, particularly findings of fact numbered II, III, IV, V, VI, VIII, IX and X.

Dated this 31st day of December, 1956.

ANDERSON, FRANKLIN
& O'BRIEN,

By /s/ BEN ANDERSON,
Of Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed January 2, 1957.

